



COMPETITION COMMISSION OF INDIA

Case No. 99 of 2014

In Re:

Mrs. Naveen Kataria

No. 2 Link Road, Jangpura Extn., New Delhi

Informant

And

M/s Jaypee Greens

G Block, Surajpur, Kasna Road,

Greater Noida, Uttar Pradesh

Opposite Party

CORAM

Mr. Ashok Chawla

Chairperson

Mr. S. L. Bunker

Member

Mr. Sudhir Mital

Member

Mr. Augustine Peter

Member

Mr. U. C. Nahta

Member

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Appearances: Advocates Shri Jagmohan Singh Khara and Shri Himmatbir Singh Kataria, and the Informant in person.

Order under Section 26(1) 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 Mrs. Naveen Kataria (hereinafter, the ‘**Informant**’) against M/s Jaypee Greens (hereinafter, the ‘**Opposite Party**’) alleging, *inter alia*, contravention of section 4 of the Act.
2. The Opposite Party is a company engaged in the business of real estate development and the Informant is a buyer of a Villa (Unit No. 5/9) at Jaypee Greens, G Block Surajpur Kasna Road, Greater Noida, U. P. developed by the Opposite Party.
3. As per the information, the Informant had booked a Villa admeasuring 655 sq. yds in the said project of the Opposite Party with super area of 5700 sq. ft. along with basement of 500 sq. ft. for a consideration of Rs. 4,05,00,000/- (Rupees four crores and five lacs). The Informant has already paid 95% of the total consideration *i.e.*, Rs. 3, 84, 75,000/- to the Opposite Party.
4. It is the case of the Informant that in the provisional allotment letter the Opposite Party has failed to mention about the provisions such as complimentary golf membership, total area of the plot, and additional basement area of 500 sq. ft. other than the agreed super area of 5700 sq. ft. *etc.* Further, it was informed to the Informant that additional construction beyond agreed area would be charged at Rs. 7105 per sq. ft. The Informant vide her letter dated 25.4.2011 pointed out these deficiencies to the Opposite Party and stated that the cost of additional



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construction would not be more than Rs. 1000 per sq. ft. After repeated reminders, the Opposite Party informed the Informant that additional construction would be charged at Rs. 5000 per sq. ft.

5. The Informant through an email on 20.5.2011 again requested the Opposite Party not to consider 500 sq. ft. of basement area as a part of the agreed super area and not to charge Rs 5000 per sq. ft. for any additional construction beyond agreed area, as the cost of shell and core is barely Rs. 1000 per sq. ft. Through email dated 21.05.2011, the Opposite Party has replied that “with your captioned unit of standard villa of 655 sq. yds comes along with a basement of 500 sq. ft. The Provisional Letter of Allotment is a standardized text and does not separately mention the basement area which is in-built in the transaction as per the sale brochure”. However, the Opposite Party has not resolved the issue pertaining to charge of Rs. 5000 per sq. ft. for additional construction.
6. The Informant has alleged that, *inter alia*, following clauses of the provisional allotment letter are unfair, one sided and loaded in favour of the Opposite Party:

Clause 2.3: The Applicant agrees that unless an Indenture of Conveyance is executed in favour of the Allottee, the Company shall continue to be the owner of the Said Premises and no payments made pursuant to the Provisional Allotment of the Said Premises to the Allottee, whether pursuant to the Standard Terms & Conditions or otherwise, shall give any Person any lien on the Said Premises until they have complied with all the terms and conditions of the Provisional Allotment and the Indenture of Conveyance has been executed in favour of the Allottee.

Clause 2.4: Nothing herein shall be construed to provide the Applicant/ Allottee with any right, whether before or after taking possession of the Said



Premises or at any time thereafter, to prevent the Company from (i) construction or continuing with the construction of the other building(s) or other structure in the area adjoining the Said Premises; (ii) putting up additional constructions at Jaypee Greens; (iii) amending / altering the Plans herein.

Clause 5.6: *The Allottee shall be liable to make payment of interest at the rate of 18% per annum on the outstanding amounts of Consideration and other dues from the date(s) upto their payment or cancellation of the Provisional Allotment. The payment made by the Allottee shall first be adjusted against the interest and/or any penalty, if any, due from the Allottee to the Company under the terms herein and the balance available, if any, shall be appropriated against the instalment(s) due from the Allottee under the Standard Terms & Conditions and the Provisional Allotment.*

Clause 7.2: *If, however, the Company falls to deliver possession of the Said Premises within the stipulated period as mentioned here in above, and within the further grace period of 90 days thereafter, the Applicant shall be entitled to a discount in Consideration for delay thereafter @ Rs.5/- per sq. ft. (Rs. 54/- per sq. mtr) per month for the Super Area of the Said Premises (“Compensation”).*

7. According to the Informant, the due date for completion and handing over possession of the plot and construction thereon as per terms and conditions laid down was 18 months from the date of signing of the plans plus ninety days of grace period. This period expired on 22.02.2013 and the Informant received the letter for possession on 09.11.2013 i.e., after a delay of eight months and 17 days.



8. The Informant has stated that upon perusal of the possession letter a reply was sent on 15.11.2011 highlighting the deficiencies in the offer of possession. It is alleged that the Opposite Party had not completed the contractual liability of completing the shell and core. The Informant has also pointed out that the Opposite Party levied an extra charge of Rs. 25, 00,000/- (twenty five lacs) plus applicable service tax with 500 sq. ft. \times 5000 per sq. ft. representing the area of basement. It is also alleged that the Opposite Party charged an extra sum of Rs. 4,22,200/- (Rs. 4000 \times 105.55 sq. ft.) representing the cost of construction of additional area of 105.55 sq. ft. at Rs 4000 per sq. ft. As per the Informant, despite sending numerous letters and meeting almost all the senior officers of the Opposite Party, it has not carried out the revision in the possession letter till the date of filing of this information and has not replied to any of the letters of the Informant as well as the legal notice.
9. Based on the above submission, the Informant has alleged that the above said conduct of the Opposite Party is abusive in terms of the provisions of section 4 of the Act and accordingly, has prayed before the Commission to investigate the matter, direct the Opposite Party to pay interest at 18% per annum till the date of possession, give relief of Rs. 34,54,754/-, and to pass any other or further order as the Commission may deem fit and proper under the facts and circumstances of the present case.
10. The Commission has perused the information and materials available on record. From the facts of the case it appears that the allegations of the Informant pertain to the alleged abuse of dominant position by the Opposite Party in violation of the provisions of section 4 of the Act.
11. It is observed that the Informant is aggrieved of the discrepancies in the provisional allotment letter dated 02.03.2011 with respect to the residential unit/



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Villa allotted by the Opposite Party to the Informant in Jaypee Greens at Greater Noida. Since, the product transacted between the Informant and the Opposite Party relates to a Villa which is a residential unit, “the market for the services of development and sale of residential units” appears to be the relevant product market in the instant matter. The relevant geographic market to be considered in this case appears to be the region of Noida and Greater Noida. This is because Noida and Greater Noida exhibit distinct characteristics from a buyer’s point of view and conditions of competition in Noida and Greater Noida areas appear to be distinct from the areas such as Delhi, Gurgaon and Ghaziabad in the National Capital Region. Thus, the relevant market in the present case is considered as “*the market for the services of development and sale of residential units in Noida and Greater Noida*”.

12. The Commission observes that the Opposite Party is a flagship company of the Jaypee Group which is operating in the field of civil engineering construction, manufacturing and marketing of cement, hydro power generation, hospitality, infrastructure development including construction of expressways *etc.* Jaypee Group has been developing various types of residential projects on 452 acres of land in the Greater NOIDA region. As part of the Yamuna Expressway Project, it was given approximately 6175 acres of land along the Yamuna Expressway in five parcels for residential, commercial, amusement, industrial and institutional purposes out of which one location of approximately 1223 acres of land is in Noida and the remaining four locations being located outside the Noida and Greater Noida region. Based on the above and the information available on the public domain regarding the market share, size and resources, dependence of consumers on the Opposite Party and size of its competitors, *prima facie*, the Opposite Party appears to be in a dominant position in the relevant market as defined *supra*.



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13. The Commission has examined the provisional allotment letter dated 02.03.2011 issued by the Opposite Party to the Informant with respect to the allotment of Villa/ residential unit in Jaypee Greens and found that some of its clauses as elaborated in the earlier part of this order, *prima facie*, are unfair, one sided and heavily loaded in favour of the Opposite Party. The Commission is of the view that the above said conduct of the Opposite Party, emanating from its dominant position in the relevant market, *prima facie* amounts to imposition of unfair terms and conditions on the Informant and other buyers of Villa in Jaypee Greens which is anti-competitive in terms of section 4(2)(a)(i) of the Act. Moreover, in some earlier cases (Case Nos. 72 of 2011, 16 of 2012, 34 of 2012, 53 of 2012, and 45 of 2013) against the Jaypee Group, similar clauses were held to be unfair, onerous, one-sided by the Commission in its *prima facie* orders.
14. In view of the foregoing, the Commission is of the view that there exists a *prima facie* case of contravention of provisions of section 4 of the Act by the Opposite Party and it is a fit case for investigation by the Director General (DG). Accordingly, under the provisions of section 26(1) of the Act, the Commission directs the DG to cause an investigation into the matter and to complete the investigation within a period of 60 days from the receipt of this order.
15. In case the DG finds that the Opposite Party has acted in contravention of the provisions of Act, it shall also investigate the role of the officials/ persons who at the time of such contravention were in-charge of and responsible for the conduct of the business of the Opposite Party. The Commission makes it clear that nothing stated in this order shall tantamount to a final expression of opinion on the merit of the case and the DG shall conduct the investigation without being swayed in any manner whatsoever by the observations made herein.



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16. The Secretary is directed to send a copy of this order alongwith the information and the documents filed therewith to the Office of the DG forthwith.

Sd/-
(Ashok Chawla)
Chairperson

Sd/-
(S. L. Bunker)
Member

Sd/-
(Sudhir Mital)
Member

Sd/-
(Augustine Peter)
Member

Sd/-
(U. C. Nahta)
Member

New Delhi

Dated: 21.05.2015