

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Competition Appeal (AT) No. 04 of 2018

IN THE MATTER OF:

Wing Commander Jai Kishan & Anr.

...Appellants

Vs

Concept Horizon Infra Pvt. Ltd. & Anr.

....Respondents

Present:

**For Appellants: Mr. Shiv Bhatt and Ms. Kumkum Bhatt,
Advocates.**

For Respondents: None.

ORDER

23.01.2018. Appellants, Wing Commander Jai Kishan and his wife Mrs. Nikunj Sisondiya filed information under section 19(1)(a) of the Competition Act, 2002 (hereinafter referred to as 'Act') against M/s Concept Horizon Infra Pvt. Ltd (OP-1) and one of its employees, Mr. Nitant Verma (OP-2) alleging contravention of provisions of the Act. The Commission by impugned order dated 6th September, 2017 having found no prima facie case of contravention of the provisions of the Section 4 of Act closed the proceeding in terms of provisions of Sub-section (2) of Section 26 of the Act. The said order is under challenge in this appeal.

2. The case of the Appellants (Informants) is that they are buyers of a flat in the residential housing project 'Orizzonte' developed by OP-1 at Knowledge Part-III, Greater Noida, Uttar Pradesh. The Informants had booked a residential unit, Flat No. 512 measuring 750 sq. ft., in the aforesaid project of OP-1 under down payment scheme. As per the Informants, after receiving full payment, OP-1

issued allotment letter on 23rd April, 2014 and executed one Memorandum of Understanding (MoU) on 21st May, 2014. It was agreed that the OP-1 would pay an assured return @ 12% per month i.e. Rs.27,000/- to Informant No.1 starting from 13th May, 2014 till the date of possession of the flat.

3. Further, case of the Informants is that despite making full payment, since July, 2016 the OP-1 stopped making payment to the Informants towards the monthly assured return without giving any notice to the Informants. The Commission having noticed the related facts, came to the conclusion that the Informants have failed to provide any evidence on record to suggest that 'M/s Concept Horizon Infra Pvt. Ltd.' is having dominant position in the market area. The Commission noticed that the allegations relates to the allotment of residential apartment/ flat in the project 'Orizzonte' developed by OP-1 in Greater Noida, Uttar Pradesh. Thus, the relevant product market in the case is of the residential flat of Greater Noida, Uttar Pradesh. Therefore, the Commission considered the market for provision of services for development and sale of residential apartments/flats as 'relevant product market' in the said case.

4. For the purpose of relevant market, it is not in dispute that the rules and regulations for development of residential housing projects applicable in 'Noida and Greater Noida' are different from other adjacent areas such as Ghaziabad, Gurgaon, Delhi, etc. The geographic area of 'Noida and Greater Noida' exhibits distinct characteristics from a buyer's point of view and the conditions of competition for the services for development and sale of residential apartments/flats in 'Noida and Greater Noida' are different from the conditions of competition for the services for development and sale of residential apartments/ flats in the areas such as Delhi, Gurgaon and Ghaziabad of the National Capital Region

(NCR). Taking into consideration the geographical area of market being Noida and Greater Noida, the Commission rightly held that the informant failed to provide any information regarding the dominance of OP-1 in the aforesaid relevant market. The Commission also noticed the magnitude of other developers and observed as follows:

“The Commission notes that the Informants have not provided any information regarding the dominance of OP 1 in the relevant market as defined supra. Based on the information available in public domain, it is observed that there are several established large real estate developers having residential housing projects of varying magnitudes and comparable or even bigger in sizes than OP 1, such as J P Associates, Eldeco, Parsvanath, Antriksh Group, Amrapali, Ansal API, Unitech, Omaxe, Supertech etc. operating in the relevant market and competing with OP 1. The presence of such large players with multiple projects provides several options to the consumers and acts as a competitive constraint upon OP 1 to operate independently of the existing market forces in the relevant market. Further, based on the information available in the public domain, it is observed that the aforesaid project of OP 1 has total area of mere 7.5 acres with 500 residential units, whereas the residential housing project size of some of the competitors of OP 1 in the said relevant market are much larger. For example, the total area of Unitech Habitat is 23 acres, the total area of Omaxe Palm Greens is over 23 acres, the total area of Ajnara Panorama is 21.49 acres, and the total

area of Ace City is 15 acres. Furthermore, the Commission observes that, other than the project 'Orizzonte', OP 1 is also developing two more residential housing projects viz. 'Horizon India' (having total area of 6 acres) and 'Horizon Noida Nxt' (having total area of 7.5 acres) in the relevant market. Even if the total area of all the three projects of OP 1 is taken into consideration, it is less than the total area of a single project developed by some of its competitors as stated above. Based on the above, the Commission is of the view that OP 1 does not possess market power to act independently of the competitive forces in the relevant market or has the ability to affect its competitors or consumers in the relevant market in its favour. Therefore, OP 1 is not found to be in a dominant position in the relevant market."

5. In absence of dominance of OP-1 in relevant market, the Commission held that no *prima facie* case made and closed the file in terms of Sub-section (2) of Section 26 of the Act.

6. Learned Counsel appearing on behalf of the Appellants submitted that as per the MOU, the Informants are entitled to receive assured return @ 12% of the total money i.e. about Rs. 27,000/- per month. It is submitted that the respondents misused its dominant position and stopped payment since July, 2016. However, as we find that the appellants have failed to bring on record any evidence to suggest that OP-1 has dominant position in the geographical area i.e. Noida and Greater Noida, we held that no *prima facie* case of violation of Section 4 of Act has been made out.

7. We find no merit in this appeal. It is accordingly dismissed. No costs.

(Justice S. J. Mukhopadhaya)
Chairperson

(Justice Bansi Lal Bhat)
Member (Judicial)

am/gc