

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Competition Appeal (AT) No. 18 of 2017

(Arising out of Order dated 5th May, 2017 passed by the Competition Commission of India in Case No.04 of 2017)

IN THE MATTER OF:

Mr. Ujjawal Narain & Anr.

....Appellants

Versus

M/s. Goel Enclave & Ors.

.....Respondents

Present:

For Appellants: Mr. Anuj Jain, Advocate.

**For Respondents: Mr. Moti Lal Yadav, Advocate for Respondents 1 to 4.
Mr. Abhishek Chaudhary, Advocate for R-7.
Mr. Bulbuli, Deputy Director, CCI.
Mr. Gursat Singh and Mr. Lav Kumar Agarwal, Advocates for MVVNL**

J U D G M E N T

BANSI LAL BHAT, J.

Appellants (hereinafter referred to as “Informants”) filed Information with the Competition Commission of India (“Commission” for short) against ‘M/s. Goel Enclave’ (Respondent No.1/ Opposite Party No.1 hereinafter referred to as “OP-1”) and eight others collectively alleging contravention of the provisions of Sections 3 and 4 of the Competition Act, 2002 (hereinafter referred to as “Act, 2002”). The

Commission after consideration of the allegations in the Information was of the opinion that there exists no *prima facie* case. It accordingly closed the matter in terms of the impugned order dated 5th May, 2017 passed under Section 26(2) of the Act, 2002. Aggrieved thereof, the Informants have preferred the instant appeal assailing the impugned order as being legally unsustainable.

2. Shorn of irrelevant details the case set up by Informants before the Commission was that the Informants had booked two flats in Residential Housing Project styled as 'Silver Line Apartments' ("Project" for short) developed by OPs-1 to 4 at Ganeshpur Rahmanpur, Chinhut, Faizabad Road, Lucknow, Uttar Pradesh. It was alleged, that at the time of booking, the OPs had assured that all the necessary approvals/clearances have been obtained for the Project and the cost of each flat was to be inclusive of all charges in terms of 'Agreement to Sale' signed *inter se* the parties. However, it was alleged, despite the payment of entire cost Ops- 1 to 4 failed to hand over the possession of the flats as per the agreed time and further demanded an additional sum of Rs.35,000/- as parking charges and Rs.80,500/- as maintenance charges from the Informants on various pretexts. According to Informants, they had no option but to pay such additional charges despite not being stipulated for in the Agreement. It was alleged that the OPs had abused their dominant position and thereby extorted a staggering amount of Rs.5,50,00,000/- as lifetime charges besides

Rs.1,75,00,000/- towards car parking charges from innocent allottees. It was further alleged that after getting possession of the flats, it was found that the Ops-1 to 4 have not properly developed the flats and the common facilities in the project. Poor quality material had been used and the area earmarked for common facilities for the residents was utilised illegally for raising eight more blocks, thereby shrinking the space for common facilities of residents. Thus, it was alleged, the gullible allottees were fleeced and duped of their hard earned earnings. The Commission, on consideration of the Information, found no substance in the allegations of abusive conduct of Ops-1 to 4 while other OPs, in its opinion, were an unnecessary surplusage in the Information having no role at all. The Commission was of the opinion that the relevant product in question was a residential flat in the geographic area of Lucknow which was the relevant geographic market. Thus, it found that the relevant market in the case was “the market for the provision of services for development and sale of residential flats in Lucknow”. The Commission noticed that there were many other major developers of Real Estate like Sahara, Eldeco, Parsvanath, Antriksh Group, Ansal API, Amrapali, Unitech, Omaxe etc. competing with OP-1 in the relevant market having comparable or even better sizes and resources. Thus, OP-1 was not dominant in the relevant market and question of abuse of dominant position did not arise. It was also of the opinion that the Information did not disclose any kind of agreement

amongst the OPs which could be termed as anti-competitive under Section 3 of the Act, 2002.

3. Heard learned counsel for the parties.

4. The opinion of the Commission in regard to OP-1 holding relatively and comparably an inferior position as compared to giants like Sahara, Parsvanath, Omaxe with bigger projects and better resources knocks the bottom of an argument advanced on behalf of the Informants in regard to the OP-1 holding the dominant position in the relevant geographic market i.e. Lucknow qua the development and sale of residential flats which is the relevant product market in the case. The Informants may have grievances in regard to the deficiency in services in as much as the quality of construction of the project may have been compromised by the Developer i.e. OP-1 and that the area earmarked for providing common facilities was partially utilised for raising more residential towers thereby shrinking the space reserved for common facilities at the cost of comfort of the allottees besides extracting more money in the form of additional charges for maintenance and parking space beyond the stipulations in the Agreement but that would be a breach of the contractual obligation entitling the allottees to claim compensation. However, no competition concern can be raised on this core in as much as OP-1 as developer was only one of the players in the field having lesser resources and smaller volume as compared to other Real Estate Developers noticed hereinabove in this order. On

consideration of the material on record and the reasons assigned by the Commission, we have no doubt in our mind that OPs 1 to 4 were not holding dominant position in the relevant market which, being residential apartment project is different from residential plot and commercial building projects, thereby justifying the conclusion that the relevant product market and the relevant geographical market have been flawlessly identified. Once OPs 1 to 4 were not dominant players in the relevant market, question of abuse of dominant position does not at all arise. The Competition concerns raised by the Informants are unfounded though for alleged breach of contractual obligation they may have a cause before the Competent Forum.

5. There being no legal infirmity in the impugned order, the appeal is dismissed. No costs.

[Justice Bansi Lal Bhat]
Member (Judicial)

[Justice Venugopal M.]
Member (Judicial)

[Shreesha Merla]
Member (Technical)

NEW DELHI
22nd May, 2020

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