

**K. Madhusudhan Rao Vs. M/S Lodha Healthy Constructions and Developers Private Limited**

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**Court :** Competition Commission of India CCI

**Decided On :** Sep-16-2013

**Judge :** The Honourable Mr. Ashok Chawla, Chairperson, the Honourable Dr. Geeta Gouri, Member, the Honourable Mr. Anurag Goel, Member, the Honourable Mr. M.L. Tayal, Member, (Retd.) S.N. Dhingra, Member & the Honourable Mr. S.L. Bunker, Member

**Appeal No. :** Case No. 40 of 2013

**Appellant :** K. Madhusudhan Rao

**Respondent :** M/S Lodha Healthy Constructions and Developers Private Limited

**Judgement :**

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

The Informant was one of the purchasers of a luxury villa apartment in the Lodha Bellezza complex to be constructed by Opposite Party (herein after referred as OP) as a complex of luxury residential apartments East Block, Eden Square, Kukatpally Village, Hyderabad.

2. The information disclosed:-

i. The Informant booked a residential apartment in East Block, Eden Square, Kukatpally Village, Hyderabad by name Lodha Bellezza bearing No. 800 on 8th floor in Beverly Hills Tower having a carpet area of 3282 sq ft. along with 3 car parks for a total consideration of Rs.2,30,73,876/- (Rupees Two crores thirty lakhs seventy three thousand and eight hundred and seventy six only).

ii. The OP did not reveal the terms of sale agreement till the payment Rs. 51,11,576/- which was about 22% of the total sale consideration. After receipt of the said payment from the informant, the OP sent the agreement for sale stamped, dated and signed by the OP stating that it was sent merely for informants signature. After going through the contents of the agreement for sale, the informant requested for amendment of certain clauses. The OP stated that it was their policy to have a uniform agreement for Sale and refused to make any changes and demanded that the agreement had to be signed as it was or the apartment booking was to be cancelled and that would lead to forfeiture of the 10% of the cost of apartment as cancellation charges (Rs. 23, 07,388/-).

iii. Clauses No. 19 and 24 in the Agreement for Sale showed arbitrary mismatch between the position of Purchasers and the Builders. The Purchasers were foisted with the liability to pay interest at 18% p.a. in case they failed to make any payment to the builder on due date as against interest @ 12% p.a. payable by the builder in case the builder failed to complete the apartment as per time line stipulated in the Agreement for Sale.

iv. That after the expiry of delivery date and after collecting 95% of the sale consideration, a letter was sent to the Informant for the first time on 04.08.2011 stating that there would be delay in construction and the apartment would be delivered in April, 2012 instead of 30.06.2011. Subsequently, another letter dated 13.01.2012 was sent stating that the delivery of the apartment was further postponed to June 2012. The fact that the project was not getting completed within the time stipulated was within the knowledge of the OP, since it had delayed in applying for building permissions for the project and other approvals at various stages. The statutory approvals were not obtained by OP because of its indifferent and casual manner of execution of project. The OP concealed the fact of delay in

construction from the apartment purchasers till it had collected up to 95% of the sale consideration.

3. The informant prayed for causing an investigation to be made regarding the abuse of dominant behaviour of the OP in the relevant market within the purview of the provisions of Section 4(2)(a) of the Competition Act, 2002 (hereinafter referred as the Act).

4. The Commission considered information, oral arguments of informant and written additional information. For examining whether the OP had a dominant position and abused that position in the relevant market, first the relevant market has to be defined keeping in view the facts of the case. The relevant market can be defined as per the provisions of Section 2(r) read with section 19(5) of the Act with due regard to the relevant geographic market and relevant product market. From the facts, it is evident that the relevant product market would be the provision of services for development and sale of residential apartments (which can be interchangeable or substitutable by the consumer) and the relevant geographic market is the area of Hyderabad as the conditions for provision of services for development and sale of residential apartments in Hyderabad are distinctly homogeneous and can be distinguished from the conditions prevalent in the neighboring areas. Thus, the relevant market would be the provision of services for development and sale of residential apartments in Hyderabad.

5. Having determined the relevant market, the next step is to assess whether the OP was dominant in the relevant market so determined or not.

Explanation (a) to Section 4 says that the "dominant position" means a position of strength, enjoyed by an enterprise, in the relevant market, in India, which enables it to (i) operate independently of competitive forces prevailing in the relevant market; or (ii) affect its competitors or consumers or the relevant market in its favour. Section 19(4) of the Act states that the Commission needs to consider various factors stated under that section while assessing whether an enterprise enjoys a dominant position or not. The informant did not supply any relevant data regarding the market share of OP in the relevant market. It is inferred from the information available in public domain, the OP is not the only real estate developer

offering residential flats in Hyderabad. There are various developers like Aditya Construction Company India (P) Ltd, Lotus Properties Ltd, Mantri Developers Pvt Ltd, Manjeera Group, Ncc Ltd and many more. Presence of other builders of repute also shows prevalence of competition. It is not a case where OP could operate independent of competitive forces. Thus, it seems, prima facie, that the OP was not a dominant player in the relevant market. The Commission in *Ajit Mishra and Supertech Ltd*(Case No. 03/2013) observed that, the presence of other well known builders in the relevant market negates the contention that informant or any other consumer was dependent on the opposite party alone to purchase an apartment.

6. Since OP prima facie does not appear to be a dominant player in the relevant market, the issue of abuse of dominance by OP in that market in contravention of the provisions of Section 4 of the Act cannot be gone into.

7. For the reasons stated above, the case deserves to be closed down under section 26(2) of the Act. The Secretary is directed to inform the parties accordingly.

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