

IN RE: SURESH CHANDER GUPTA (INFORMANT) AND VATIKA LIMITED (OPPOSITE PARTY)

Decision date: 03/10/2019

Keywords: dominance, agreement with consumer, builder-buyer agreement

Rule: Sec. 3 and 4 of the Competition Act, 2002.

The Informant approached a property dealer in December 2012, for purchase of a residential flat in Gurgaon. The property dealer advised the Informant that Vatika was the top Developer in New Gurgaon and was developing '*Vatika Town Square*', a commercial tower in commercial cum retail shopping complex. In a meeting between the sales executive of OP and the Informant, the latter was told commercial space in Block-D was being sold at that time. The Informant was told by Vatika that Block-D was under construction and would be completed by end of June 2015. It was stated that by that time the entire Dwarka Express highway road would also be complete. The Informant was assured that there would be appreciation in the value of the commercial units in '*Vatika Town Square*' Block D and the Informant could either sell the property at very good premium before taking possession or take physical possession of the same and sell at a later date for a higher premium or lease it at very good rentals.

The sales executive of Vatika asked the Informant to pay the advance amounts, which were duly paid for by the Informant. The Informant was also told that possession of the property would be given after 2.5 years *i.e.*, around June, 2015 and in case of delay in construction or any other default by Vatika, simple interest @ 8 % would be payable by Vatika. These representations were verbal and the Informant was allegedly told that these terms and conditions would be incorporated in the Builder Buyer Agreement ("BBA") to be executed by Vatika with the Informant.

The stamp duty for BBA was paid by Vatika on 24.02.2013 and the Informant was called for execution of BBA. The Informant had alleged that in the BBA there was neither any mention of the construction/completion/possession date nor of the payment of simple interest @ 8 % to buyer, for delay, if any, in completion of construction by Vatika. The Informant was told that it being a standard draft, no change was possible in the text of the BBA. The sales executive of Vatika assured the Informant that Vatika was one of the most reputed developers and it never failed in keeping its verbal as well as written commitments.

The Informant received an intimation of possession letter dated 16.11.2017. It was averred that on 12.04.2018, in a meeting at office of Vatika, the Informant was told, that leasing/renting of commercial units in '*Vatika Town Square*' was already going on in a big way and property may

be able to fetch some premium. It was alleged that on visit to 'Vatika Town Square' there was no activity of leasing/renting at D Block and the construction was not complete. All floors had only bare columns and bare floor without any partitions for the individual units, except for some activity for one unit on 5th floor.

It was stated by the Informant that *vide* letter dated 16.04.2018, he requested Vatika to inform him the amount that would be refunded in case he decides to terminate the BBA alongwith complete details of deductions, if any, from the advance paid by the Informant. The Informant submitted the letter by hand in Vatika Office and was told that the reply would be provided in a week's time. The Informant, however, had alleged that no reply was ever received from Vatika since then. Upon repeated inquiries, the Informant was given no reply.

The Informant had alleged that Vatika was required to complete construction and offer possession of the commercial unit by June, 2015. However, Vatika neither informed about any delay due to *force majeure* event nor sought extension of time. Further, Vatika did not reply to any of the letters sent by the Informant seeking information about amount payable to the Informant in case the BBA was terminated. The Informant had alleged that the BBA was not only one sided imposing unfair, discriminatory terms and conditions on the buyer, but also covered builder from all foreseeable or un-foreseeable events at the cost of buyers.

The Informant had alleged that there was selling of property through unfair means by nexus between Vatika and property dealers. The Informant had also alleged that Vatika had not taken appropriate action to promote 'Vatika Town Square' and was probably diverting funds collected from Block-D for other projects. The Informant had further alleged that the BBA was completely silent on its obligation to inform buyers and take mitigating measures to minimize adverse impact of *force majeure* event.

Analysis of the Commission

The Commission observes that the provisions of Section 3 of the Act have no application to this case as the Informant was a consumer and agreement with a consumer did not fall within the ambit of the Section 3 of the Act. With regard to Section 4 of the Act, the Commission observes that the matter relates to sale of commercial units in a project developed by Vatika which was booked by the Informant and an advance was paid by him. The first step in the assessment of a case for alleged violation of Section 4 was to define the relevant market.

Relevant Market

The Commission observes that sale of commercial units, form a separate relevant product market in terms of the provisions of the Act, because the intention and factors considered by a consumer while buying a commercial/office unit were different from buying a residential flat

or plot. Thus, considering factors such as physical characteristics or end use of goods, price of goods or services, consumer preferences and nature of service offered, the relevant product market for the purposes of this case was the “provision of services for development and sale of commercial space”. the Commission opines that the relevant geographic market in the instant case would be ‘Gurugram’. Thus, the relevant market would be the market of “provision of services for development and sale of commercial space in Gurugram”.

Assessment of Dominance

The next step in a case of alleged abuse of dominant position was to see if the opposite party was dominant in the relevant market. It was observed that apart from Vatika, there were many players such as *Unitech Limited, Ansal Housing, DLF Limited, Paras Buildtech, Emaar-MGF, Vipul Infrastructure Developers limited., Parsvnath Developers limited, Spaze Towers Private Limited, Raheja Developers Limited etc.* which were operating in the relevant market and providing services of development and sale of commercial space in Gurugram. These players were providing same or similar service and these services act as competitive constraints on the services provided by Vatika. Thus, the Commission observes that Vatika cannot be said to be dominant in the relevant market as delineated above.

Conclusion

In view of the above finding that Vatika had no dominance in the relevant market, no case to examine alleged abuse of dominance by Vatika in the matter, under the provisions of Section 4 of the Act, remains for determination by the Commission. In view of the foregoing, the Commission was of the opinion that there exists no *prima facie* case and the information filed was closed forthwith under Section 26(2) of the Act.

