

COMPETITION COMMISSION OF INDIA

Case No. 02 of 2023

In Re:

Devendra Nath
15, Block H-16, Bapa Nagar,
Karol Bagh - 110005

Informant

And

M3M India Private Limited
Unit No. SBIC/5L/ Office/ 008, M3M Urbana,
Sector-67, Gurugram, Manesar Urban Complex,
Gurugram - 122001

Opposite Party

CORAM:

Ms. Ravneet Kaur
Chairperson

Ms. Sangeeta Verma
Member

Mr. Bhagwant Singh Bishnoi
Member

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

1. The present Information has been filed by Mr. Devendra Nath (hereinafter referred to as the, “**Informant**”) under Section 19(1)(a) of the Competition Act, 2002 (hereinafter referred to as the “**Act**”) against M3M India Private Limited (hereinafter referred to as the

“**Opposite Party**”/ “**OP**”), alleging contravention of the provisions of Section 4 and Section 3(4) of the Act.

2. The Informant is a resident of Gurgaon, Haryana. M3M India Private Limited is a real estate developer and has its registered office in Gurugram and the project under issue is M3M Merlin located in Sector 67, Gurugram, Haryana.
3. It has been stated by the Informant that the Commission has the jurisdiction to hear and decide the present matter under the provisions of the Act. Reliance has been placed upon the orders passed by the Commission, namely, *Bellaire Owner’s Association v. DLF Limited* (Case 19 of 2010) and *Naveen Kataria v. Jaiprakash Associates Limited* (Case No. 99 of 2014) in support of their submissions. It has also been stated that the OP is an ‘enterprise’ within the meaning of Section 2(h) of the Act and functions of the OP are not related to the sovereign functions of the Government, thus, making the OP amenable to the jurisdiction of the Commission.
4. It has been alleged that the OP started construction of additional 11th tower in its project, M3M Merlin, located in Sector 67, Gurugram, without taking prior consent of its residents. It has been further stated that the project M3M Merlin was announced in 2011 and the brochure mentioned that the project area would be 13.344 acres with 10 towers to be constructed with world-class amenities. The initial plan also included a low-rise Economically Weaker Section (“**EWS**”) building on one corner. The layout was revised and approved in January 2014 and the area, which was earlier shown as EWS housing, was changed to an area for future development. It has been stated that the developer obtained the occupation certificate (“**OC**”) in March 2017 and in the OC issued by Directorate of Town and Country Planning (“**DTCP**”) the number of towers was limited to 10. The OP submitted the deed of declaration in June 2017 wherein the number of towers was mentioned as 10.
5. It has been alleged that the OP did not take consent of the residents before taking the approval of the DTCP for changing the layout and construction of a new tower and the

11th tower was not included in the original layout plan. In other words, M3M started construction of the additional 11th tower in its residential project M3M Merlin without the necessary prior approval and in complete violation of the initial sanctioned plan on the basis of which the projects were initially sold to the homebuyers.

6. The Informant has stated that in the real estate sector, a residential unit is different from commercial unit. Further, the provision of services for development and sale of standalone house, villa *etc.* is also a distinct product compared to services for development and sale of residential flats or apartments. It has also been stated that while, standalone house, villa *etc.* allow buyers to decide on their own the floor plan, structure and other specifics of dwelling units subject to applicable regulations, no such discretion is available to a buyer in relation to a residential flat. Hence, residential flats form a separate product. Accordingly, the Informant has delineated the relevant product market in the instant case as the '*market for provision of services of development and sale of residential flats*'. In respect of the relevant geographic market, the Informant has stated that a person intending to buy a residential flat in Sector 67, Gurgaon may not prefer to purchase the same in other areas because of various factors such as price, distance, locational preferences, availability of transport facilities *etc.* Thus, as per the Informant, the relevant geographic market in has been delineated as '*Sector 67, Gurgaon*'. Accordingly, the Informant has delineated the relevant market as '*market for provision of services of development and sale of residential flats in Sector 67, Gurgaon*'.
7. With respect to the alleged dominant position enjoyed by the OP, it has been stated by that in the financial year 2021-22, gross sales of the OP and its subsidiaries was Rs. 10,500 crore. As per the Informant, the OP claims to be a leading player in retail, residential and commercial projects, and has about 40 projects to his credit in Gurugram itself. The OP also claims that with a land bank of 2400 acres, M3M India has established itself as one of the largest real estate conglomerates of the country. It has also been stated that M3M is developing around 11.23 million square feet, concentrating mainly across Sector 65 and 67 of Gurgaon, Haryana. Accordingly, it has been averred that the OP enjoys dominant position in the relevant market, as defined by the Informant.

8. It has been stated by the Informant that the OP has abused its dominant position by its conduct of construction of an additional tower in the project M3M Merlin without obtaining prior approval of the residents. It has also been alleged that the OP is engaged in other illegal and nefarious activities.
9. On the basis of the averments made above, the Informant has, *inter alia*, prayed to the Commission to pass an order under Section 26(1) of the Act, directing the Director General (“DG”) to investigate the matter. The Informant has also prayed the Commission to declare that OP is dominant in the relevant market as stated *supra* and is abusing its dominant position. The Informant has further requested the Commission to direct the OP to cease and desist from indulging in anti- competitive activities under the provisions of Section 4 of the Act and impose maximum penalty on the OP under Section 27 along with a prayer to pass any other order as may be deemed appropriate under the Act.
10. The Commission has considered the Information and material available on record in its ordinary meeting held on 28.06.2023 and decided to pass an appropriate order in due course.
11. The Commission notes that the Informant is primarily aggrieved by the conduct of the OP in relation to construction of additional 11th tower in its project, M3M Merlin, located in Sector 67, Gurugram, without taking prior consent of its residents. This conduct has been alleged as abuse of dominant position by the OP in contravention of provisions of Section 4 of the Act.
12. For analysing the allegations brought out in the Information under Section 4 of the Act, delineation of the relevant market, followed by assessment of dominance of the Opposite Parties in the said relevant market and then examination of alleged abusive conduct is required.
13. As per the scheme of the Act, relevant market comprises relevant product market and/or relevant geographic market. The relevant product market is a market comprising of all

those products or services which are regarded as interchangeable or substitutable by the consumer, by reason of characteristics of the products or services, their prices and intended use. The relevant geographic market, on the other hand, defines the contours with regard to geography within which the conditions of competition for supply of goods or provision of services are distinctly homogenous and can be distinguished from the conditions prevailing in the neighbouring areas.

14. The Commission notes that the residential project in issue is M3M Merlin, Gurgaon developed by the OP which offers residential flats/ multi-storey apartments. The Commission, in line with its previous decisions in similar matters, is of the view that independent residential units such as villas, estate homes, and row-houses in an integrated township have unique characteristics/features and are altogether different products, distinct and separate from other residential properties such as residential flats/ multi-storey apartments. Accordingly, for the purpose of analysis under Section 4 of the Act the relevant product market may be defined as the “*market for provision of services of development and sale of residential flats*”.
15. With respect to relevant geographic market, the Commission, in line with its previous decisions in similar matters, is of the view that the relevant geographic market in the instant case may be delineated as ‘*Gurgaon*’, as the conditions for provision of services of development and sale of residential flats in Gurgaon are clearly distinguishable from the conditions prevalent in other neighbouring areas. Accordingly, the relevant market in the instant case could be delineated as the “*market for provision of services of development and sale of residential flats in Gurgaon*”.
16. After delineating the relevant market, the next step is to ascertain the dominance of the OP in the relevant market, as delineated *supra*. The Commission observes that the OP does not seem to enjoy dominant position in the delineated relevant market due to presence of other developers in Gurugram such as DLF, Emaar India, Godrej Properties, Ansal API, Vatika Group, Unitech Limited, Sobha Limited, Adani Group, Eldeco Group, Ashiana Housing Limited, Raheja Developers Limited, which seem to impose significant

competitive constraints on the OP. Accordingly, in the absence of dominance of the OP in the relevant market, the issue of examination of its alleged abusive conduct does not arise.

17. The Commission also observes that although the Informant has alleged contravention of Section 3(4) of the Act in the matter, but the said allegation has not been substantiated. The Commission is of the view that provisions of Section 3(4) of the Act have no application to the facts and circumstances of the present case, as it requires an agreement between two or more enterprises operating at different levels of the same supply chain.
18. In view of the foregoing, the Commission is of the opinion that there exists no *prima facie* case of contravention of the provisions of either Section 4 or Section 3(4) of the Act against the OP, and therefore, the matter is directed to be closed forthwith in terms of the provisions of Section 26(2) of the Act.
19. The Secretary is directed to forward a certified copy of this order to the Informant accordingly.

Sd/-
(Ravneet Kaur)
Chairperson

Sd/-
(Sangeeta Verma)
Member

Sd/-
(Bhagwant Singh Bishnoi)
Member

New Delhi
Date: 19.07.2023