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Fair Competition
For Greater Good

COMPETITION COMMISSION OF INDIA

Case No. 94 of 2016

In Re:

**Gurgaon Institutional Welfare Association
34/35, Village Sukhrali, Gurugram, Haryana**

Informant

And:

**Haryana Urban Development Authority
(HUDA), Plot No. C-3, Sector 6, Panchkula,
Haryana**

Opposite Party

CORAM:

**Mr. Ashok Kumar Gupta
Chairperson**

**Ms. Sangeeta Verma
Member**

**Mr. Bhagwant Singh Bishnoi
Member**

Appearances:

For Informant:

Mr. Anil K Aggarwal, Advocate

Ms. Ananya Madhusudan, Advocate

Mr. Vinod Jain, Authorised Representative

For HUDA:

Mr. Alok Sangwan, Advocate



Order

Introduction

1. The information in the present case was filed by Gurgaon Institutional Welfare Association (**'Informant/GIWA'**) under Section 19(1) (a) of the Competition Act, 2002 (**'Act'**) against Haryana Urban Development Authority [now Haryana Shahari Vikas Pradhikarna] (**'HUDA'**/**'HSVP'**/**'OP'**) alleging contravention of the provisions of Section 4 of the Act.

Background

2. The Informant is an association of individual allottees/ purchasers of institutional plots in Gurgaon, registered under the Haryana Registration and Regulation of Societies Act, 2012. HUDA is a statutory body constituted under Haryana Urban Development Authority Act, 1977 (**'HUDA Act'**), responsible for planned development of urban estates in the State of Haryana and is an exclusive supplier of institutional plots in the sectors of urban estates developed by it. The Informant has alleged that HUDA enjoys monopoly status and dominant position in the market for supply and sale of institutional plots in urban estates in the State of Haryana.
3. It is submitted that HUDA issued brochures inviting offers for purchase of institutional plots in Sectors 32 and 44 of Gurgaon (now Gurugram), Haryana on free-hold basis on first come first served basis. On considering the representation made by HUDA, the allottees submitted their offers to purchase the institutional plots put on sale by the Opposite Party. The members of the Informant/allottees were allotted institutional plots in various sectors of urban estates in Gurgaon 'on freehold basis'. The said allottees paid the entire consideration as demanded by HUDA in the allotment letters and completed construction of buildings on the plots allotted to them. It was stated that upon payment of complete consideration, the allottees became entitled to all rights, interests and title of the institutional plots in their favour, as the allotment was done on freehold basis.



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4. However, when the allottees approached HUDA for execution of conveyance deeds, HUDA allegedly imposed additional illegal terms and conditions for execution of conveyance/ sale deed in favour of the allottees. It was stated that HUDA imposed an *ex facie* illegal and void condition manipulating the terms and conditions of the allotment which was contrary to the statutory provisions, thereby restricting the rights of the allottees to further sell, mortgage, lease out the plots purchased and buildings constructed by them. The Informant alleged that the OP has abused its dominant position by incorporating illegal terms and conditions, and supplementary obligations in contravention of the statutory provisions and had, *inter alia*, violated the provisions of Sections 4(2)(b), 4(2)(c), 4(2)(d) and 4(2)(e) read with Section 4(1) of the Competition Act, 2002.
5. Based on the information and material available on record, the Commission *vide* its order dated 31.10.2017 directed the Director General ('DG') to carry out a detailed investigation into the matter under Section 26(1) of the Act.

Observations and findings of the DG

6. Based on the information submitted by the Informant, the order of the Commission passed under Section 26(1) and the information and evidence gathered during the investigation, the DG submitted an Investigation Report dated 06.07.2018, the observations and findings of which are elucidated in the ensuing paragraphs.
7. The DG analysed the relevant product market as per demand side substitutability in terms of characteristics, price and intended use of institutional plots. The DG noted that following are the permissible usages of the 'institutional plots' allotted by HUDA:
 - a. Corporate office
 - b. Research & Development Centre
 - c. Education and Training Centres



- d. Office of the professional group/ association or societies, not engaged in the commercial/ manufacturing activities
 - e. Other institutional usage
8. The DG further analysed the nature of allotments made by other urban development authorities like Delhi Development Authority, Greater Noida Industrial Development Authority, *etc.*, and the permissible usage of ‘institutional plots’ allotted by such authorities. The DG noted that institutional plots allotted by HUDA as well as other authorities are for a pre-defined specific purpose and thus, such institutional plots are neither interchangeable nor substitutable with any other type of plots, *viz.* residential, commercial, industrial *etc.* The DG assessed the mode of allotment of various types of plots, eligibility for applying for various type of plots and consumer preferences and noted that on all these parameters, the Institutional plots are different from residential, commercial, industrial plots and as such not substitutable or interchangeable with them.
9. The DG, thus, delineated the relevant product market as ‘*market for provision of services for development and sale of institutional plots*’.
10. Further, the DG observed that the institutional plots allotted by other developers in the residential projects are for providing community facilities such as school, dispensary, post office *etc.*, as per the approved layout of the residential projects and these institutional plots have to be allotted within the premises of residential projects itself whereas the maximum numbers of institutional plots allotted by HUDA were being used as corporate office, training centres, research & development centres, *etc.* The average size of the institutional plot provided by the developers in residential projects was found to be much smaller than that provided by HUDA and Haryana State Industrial and Infrastructure Development Corporation (HSIIDC). Accordingly, the DG concluded that the institutional plots provided by builders/developers in residential projects were not substitutable with institutional plots provided by the OP and other government agency



such as HSIIDC in terms of size. In view thereof, the DG suggested an alternate relevant product market for the present case as *'the market for provision of services for development and sale of institutional plots (other than in residential projects).'*

11. While determining the relevant geographic market, the DG found that all other similar statutory authorities in other States are governed by some specific statutory Act/rule. While some authorities allotted institutional plots on 'freehold basis', some other authorities allotted them on 'leasehold basis' or as a mix of both. The mode of disposal of institutional plots was also found to be varying from state to state. In some cases, the DG found that allotment was done on auction basis, in some cases 'on first come first served basis', while in some other cases on a public draw system. There was no uniform standard. Thus, it was observed by the DG that the conditions of competition for supply of institutional plots varied from state to state. The DG further noted that the land available in the State of Haryana was developed as per the master plan drawn in accordance with the State's future requirement and potential. The growth, potential and other parameters for the state of Haryana were found not to be comparable with any other State or Union Territory. Therefore, the DG delineated the relevant geographic market in the instant case as *'the State of Haryana'*.
12. As regards the position of HUDA in the relevant market, the DG noted that HUDA is a statutory body of the Haryana Government constituted under the HUDA Act and has been vested with several powers of acquisition, development and disposal of the land *vide* provisions of the said Act.
13. The DG sought information from various other private developers/groups operating in the State of Haryana on the institutional plots allotted by them. On perusal of their replies, the DG found that only three developers, namely Vipul Ltd. (Vipul), Raheja Developers Ltd. (Raheja), and Ansal Housing & Construction Ltd. (Ansal) had provided a few institutional plots, that too in their residential projects. Bereft of details, the information



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so collected indicated that, on the basis of number of institutional plots allotted, HUDA had market share more than all its competitors taken together in all the years under consideration except one year, *i.e.* 2015-16. In a cumulative period of 9 years, it was observed that HUDA had a market share of 78% which was highest among all its other competitors. Further, in respect of year-wise allocation of area (in sq. mts.) for institutional plots, it was noted by the DG that the share of HUDA varied from 59.67% to 99.44% (except for 2015-16) and in a cumulative period of 9 years, HUDA had a market share of 81.18% which was highest among all other competitors.

14. Further, the DG made a comparative analysis between the financial resources held by HUDA vis-à-vis HSIIDC and private developers, and concluded that HUDA had advantage over its competitors.
15. *Inter alia* based on factors such as market share, size and resources of the enterprise, size and importance of competitors, dependence of consumers and regulatory provisions, *etc.*, the DG concluded that HUDA is dominant in the suggested relevant market, *i.e.* ‘*market for provision of services for development and sale of institutional plots in the State of Haryana*’.
16. The DG also examined the position of HUDA in the alternative relevant market, *i.e.* ‘*market for provisions of services for development and sale of institutional plots (other than in residential projects) in the State of Haryana*’, delineated by it and found HUDA to be dominant in the alternative relevant market also.
17. To ascertain whether the conduct of HUDA amounts to abuse, the DG first looked at whether the allottees can be said to have absolute ownership over the institutional plots allotted by HUDA on freehold basis, for which entire consideration had been paid. The DG then investigated whether the OP has imposed any unfair and/or discriminatory



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condition(s) restricting transfer by way of sale/ mortgage/ lease of the institutional plots and buildings constructed on such plots.

18. As regards the first issue, the DG analysed the differences between properties allotted on freehold basis *vis-à-vis* those allotted on leasehold basis. The DG also sought information from other authorities in this regard. Based on information collected, the DG noted that there are differences between 'freehold' and 'leasehold' allotment of properties. While the lessor gives the land on lease to the buyer ("lessee") for a stipulated period, in case of freehold, the owner/buyer enjoys the property for perpetuity.
19. Further, while the lessee is subjected to payment of premium (lease rent) at specified periodicity to the lessor, the payment for the rights in the property in case of freehold is made upfront or within a time period permitted by the owner. Furthermore, the ultimate ownership vests with the lessor in case of a lease, whereas in case of freehold, the ownership is transferred to the allottee permanently through sale deed and the buyer becomes the owner of the property. However, the buyer's title as the owner is subject to the provisions of the law of land.
20. On the issue that the Informant has absolute ownership over the institutional plots allotted by the HUDA on freehold basis, for which entire consideration had been paid, the DG relied upon the decision of the Hon'ble Supreme Court of India in the case of *Indu Kakkar vs. Haryana State Industrial Development Corporation* delivered on 02.12.1998 wherein it was held that the allottee is bound by the terms and condition under which allotment has been made and the allotting agency is well within its rights to prescribe certain terms and conditions attached to the allotment. Therefore, the DG concluded that the right of the allottee to that extent is not absolute and the contention of the Informant that it has absolute ownership over institutional plots allotted by the OP on freehold basis is not tenable.



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21. As regards the second issue, the DG observed that for allotment of institutional plots, brochures for the same were published by HUDA inviting applications and upon consideration of the application, if approved, an 'allotment letter' was issued to the allottee containing certain terms and conditions. Then, upon payment of 100% of price of an institutional plot, a deed of conveyance was executed between the allottees and HUDA. Although, all the three documents (brochure, allotment letter and conveyance deed) spelt out the terms and conditions imposed by HUDA on the allottees of institutional plots, the DG noted that these documents varied in respect of the relevant clauses pertaining to ownership and transfer. While the brochure stated that the allottee '*shall have no right to transfer by way of sale, gift, mortgage or otherwise the plot/buildings or any right/title or interest therein*', the allotment letter stated that the allottee '*shall have no right to transfer by way of sale, gift, mortgage or otherwise the plot/building or any right, title or interest therein till the full price is paid to the Authority, except with the prior permission of the competent authority*'. The conveyance deed, on the other hand, stated that the vendor '*shall have a first and paramount charge over the said site for unpaid portion of the sale price and the transferee shall have no right to transfer by way of sale, gift, mortgage or otherwise the land or any right, title and interest therein (except by way of lease on a monthly basis) without the previous permission in writing of the Estate Officer*'. The conveyance deed further stated that the '*Estate officer while granting such permission may impose such condition as may be decided by the Chief Administrator from time to time*'.
22. Relying upon the decision of the Hon'ble Supreme Court in *The Andhra Pradesh Industrial Infrastructure Corporation Limited v. S.N. Rajkumar & others*, the DG concluded that the deed of sale/conveyance is the appropriate document from which the rights and obligations of the seller and the buyer flow. In the present case, it meant that the conveyance deeds were the relevant documents which required examination insofar as the allegations pertaining to abuse by HUDA against the allottees of institutional plots were concerned. Apropos, the DG perused conveyance deeds executed between HUDA



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and various allottees, including members of the Informant. The DG analysed the relevant provisions of the conveyance deeds mentioned in the standard format of the Deed of Conveyance, *i.e.* Form 'D' of Haryana Urban Development (Disposal of land and Buildings) Regulations, 1978. The relevant clause relating to ownership and transfer of property is given hereunder:

'(2) the vendor shall have a first and paramount charge over the said site for unpaid portion of the sale price and the transferee shall have no right to transfer by way of sale, gift, mortgage or otherwise the land or any right, title and interest therein (except by way of lease on a monthly basis) without the previous permission in writing of the Estate Officer. The Estate officer while granting such permission may impose such condition as may be decided by the Chief Administrator from time to time'.

23. The DG observed that the said condition was modified in the year 1982 by Notification dated 12.07.1982 published in Haryana Gazette. The amended clause is reproduced hereunder:

'(2) the vendor shall have a first and paramount charge over the said site for the unpaid portion of the sale price including additional price'.

24. The DG ascertained that *vide* the amended clause (after 1982) the OP retained the right regarding ownership of the property only to the extent of unpaid portion of the price. On perusal of the model conveyance deed in Form 'D' and conveyance deeds executed between HUDA and various allottees, it was observed that Clause 2 of Form 'D' regarding ownership and transfer of Institutional plots prevailing prior to 1982, was used in the conveyance deeds executed even after 1982, for which HUDA could not submit any plausible explanation.



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25. The DG further examined the origin of Clause 2, as mentioned in the conveyance deeds executed between HUDA and the allottees. For this purpose, the DG perused the relevant provisions of the HUDA Act, 1977 and HUDA Regulations, 1978. The DG observed that Clause 2 of the Conveyance Deed took support from Section 15(5) of the HUDA Act which clearly stipulates that the ownership over any land or building or both shall continue to vest with HUDA until the entire consideration, interest or any other amount are paid to it. Further, Section 15(6) of the HUDA Act, 1977 mentioned that an allottee cannot transfer his rights in the land or building except with the previous permission of HUDA and also refer to the conditions provided in the Regulations. The aforesaid HUDA Regulation 15 clearly specified that the allottee shall not transfer his rights in the land or building except with the previous permission of the Estate Officer. Clause 10 of the conveyance deed stated that the allottee shall accept and obey all rules and regulations made or issued under the HUDA Act. Considering the above, when the relevant provisions of the Act were analysed, it was observed that Section 15(6) clearly puts an encumbrance that an allottee cannot transfer his rights in the land or building except with the previous permission of HUDA and the Regulations drawn thereunder also clarifies the position.
26. The DG further opined that though the Estate Officer or the Chief Administrator can impose certain conditions, however, no condition explicitly or implicitly restricting the transfer, absolutely, can be imposed as the same is contrary to the provisions of Section 10 of the Transfer of Property Act, 1882 which states that *any condition imposed in a sale restricting the further sale of the immovable property shall be void.*
27. As per the DG, a combined reading of the provisions given in the Conveyance Deed, Section 15(5) of the HUDA Act and Regulation 15 of HUDA Regulations seems to stipulate that the ownership over any land or building or both shall continue to vest with HUDA until the entire consideration, interest or other amount are paid to it and an allottee



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cannot transfer his rights in the land or building except with the previous permission of HUDA.

28. The DG concluded that imposition of certain conditions by HUDA in the Conveyance Deeds which are drawn from statutory framework did not put any absolute restriction on transfer of institutional plots and were neither unfair nor discriminatory in terms of Section 4 of the Act. Thus, the claim of the Informant that pursuant to the payment of full consideration and signing of the conveyance deed, its members were not vested with rights to transfer without prior permission of the Estate Office or Administrator was not found to be legally tenable by the DG.
29. After analysing the legal provisions, the DG examined the conduct of HUDA with regard to the application of Clause 2 of the Conveyance Deed. The DG observed that two types of applications were received by HUDA seeking permission for transfer/ sale of institutional plots. The first type of requests were related to permission for transfer/ sale of the institutional plot in favour of the auction purchaser, where such auctions have been carried out by the banks/Financial Institutions owing to default in compliance to the conditions of mortgage by the original allottee under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act, 2002). The other type of requests were related to permission for sale/ transfer on account of business exigencies.
30. Though theoretically sale/ transfer of institutional plots is allowed with the permission of the Estate Officer, the DG observed that in practice such permission had never been granted, thereby making the provision of seeking permission redundant. During deposition before the DG, Shri R. S. Verma, Administrator (HQ) HUDA, was asked to explain the reasons for not granting permissions for sale/transfer of institutional plots. In response, he stated that as per the policy of HUDA/HSVP the transfer of institutional plots is not allowed. As regards the request for transfer of institutional plots from the



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banks and auction purchaser under the SARFAESI ACT, he stated that a committee has been constituted to consider such requests and on 30.11.2017, the committee submitted its recommendations (by following transfer guidelines followed by HSIIDC) wherein it was suggested to allow transfer of such institutional plots after paying certain transfer fee for the same. The DG observed that the Committee's recommendations were approved by the Chief Administrator who had submitted a proposal for consideration and approval of Hon'ble CM-cum-Chairman, HUDA.

31. The DG examined the policies of other similar authorities with regard to allotment of institutional plots and noticed that none of those authorities, except HSIIDC and Punjab Urban Planning and Development Authority (PUDA), allotted institutional plots on freehold basis. As regards the HSIIDC, the DG noted that it does not restrict the allottees from transferring the allotted site but the transfer was permissible subject to certain terms and conditions as mentioned in Estate Management Procedure-2015. Such conditions included full payment towards price of site, obtaining of occupation certificate (after constructing 25% of the permissible covered area), starting of operation and execution of deed of conveyance, with the prior written approval of the HSIIDC. PUDA, on the other hand, allotted institutional sites on freehold basis by way of auction which were freely transferable to the trusts and societies registered under the relevant statutes subject to the payment of a transfer fee equivalent to 9% of the total value of the site to PUDA.
32. The DG also examined Shri R.S. Verma about the subsidisation of rates in allotment of institutional plots allotted by HUDA in comparison to prevalent market price to which he stated that the institutional plots were not allotted on subsidised rates, though all types of plots were allotted at lower prices compared to prevalent market rates.
33. Based on the aforesaid, the DG concluded that the conduct of HUDA in not allowing transfer of institutional plots was unfair as it led to exit barriers by closing the opportunities for allottees to resell those institutional plots. The restriction also created



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entry barriers as it prevented subsequent buyers to deal in these plots/ properties, ultimately created impediments in the development of secondary market for resale of institutional plots. Further, the same was termed as exploitative also as the only exit route available to buyer of an institutional plot was to return it to OP and receiving 90% of the actual price in return. The DG cited the transaction between one of the allottees, *namely* Sirpur Paper Mills and HUDA wherein HUDA had allotted an institutional plot for a consideration of ₹ 1,25,60,000/- and as per existing policy, the refunded amount at the rate of 90% was ₹ 1,13,04,000/- which as per market auction price was of ₹ 30.73 crore. The gain derived by HUDA from the said transaction showed the anti-consumer, exploitative and unfair conduct which was in contravention of Section 4(2)(a)(i) of the Act. Therefore, the DG found that the said restriction resulted in the contravention of Section 4(2)(a)(i) of the Act. The DG was of the view that given the dominant position of HUDA, buyers lacked countervailing powers and had no option but to agree to such unfair impositions.

34. Another related allegation of the Informant was that HUDA had not only restricted the rights of the allottees for transfer of institutional plots by way of sale but also restricted the rights of the allottees to transfer by way of mortgaging and leasing out the institutional plots and buildings constructed by them. The DG found no merit in such allegation as the investigation revealed that HUDA had granted the permission for transfer of the rights by the allottee by way of mortgage of the institutional plots for the purposes of raising of loans from the banks on usual terms and conditions, as are being made applicable in case of other types of plots such as residential, commercial, group housing flats, etc. Further, HUDA provided permission for change in organisational structure of allottees of institutional plots upto the extent of 49% in which remaining 51% share had to be with the original allottee, with prior permission of Chief Minister of Haryana cum Chairman of HUDA. It was also noted that in respect of lease policy, HUDA had issued memo for leasing out of premises/ building constructed on institutional plots to the extent of 75% portion of the building area subject to charging a certain transfer fee along with conditions



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that the plot/building should not be used for any purpose other than for which it was allotted. Thus, it appeared to the DG that reasonable conditions were provided for transfer of rights by way of lease/ rent of the premises/buildings constructed on the institutional plots.

35. The Informant also levelled the following allegations with respect to the conduct of HUDA:

- i. Different terms and conditions were published by HUDA in its brochures for sale of institutional plots at different points of time.
- ii. Variation in Clause 12 of the allotment letters issued to the allottees and Clause 12 of the statutory Form 'C' of the allotment letter.
- iii. Unauthorised variation in the conveyance deed.
- iv. Issue of Physical and Financial Survey/audit of institutional plots/building by MBR & Company.

36. However, the DG did not find any merit in the allegations of the Informant as regards the aforesaid issues.

37. The DG observed that the Informant, in its information filed before the Commission, had also alleged that HUDA imposed additional liability on the allottees to pay un-determined consideration amount towards additional cost of the plots in future. In order to examine this allegation, the DG examined the relevant provisions in conveyance deed, *i.e.* Clause 11, and inferred that HUDA had reserved the rights for recovery of additional/enhanced price of land from the allottees and this position has been duly informed to the allottees not only at the stage of the issue of allotment letters but also at the stage of the signing of the conveyance deed between HUDA and the allottees. The DG also perused the provisions of Land Acquisition Act, the Haryana Urban Development (Disposal of Land



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and Building) Regulations, 1978 and instructions issued by HUDA to the allottees regarding enhancement of costs. In view of the same, the DG concluded that HUDA had acted legally in imposing additional liability over the allottees as the covenant(s) of letter of allotment and/or conveyance deed derive its existence from the relevant statutory provisions and in the light of the reasoning given above, the same was not found to be anti-competitive.

38. Further, the DG also examined Clause 12 of Conveyance Deed in Form 'D', which stated that in event of any dispute between allottees and HUDA, the matter would be referred to sole arbitration of Chief Administrator or to officers appointed by him. The DG observed that in a contract, both parties are to be situated at equal positions and retainment of right of appointment of arbitrator by HUDA, left the Informant with no right to challenge the Constitution of arbitrator on any of probable ground. The decision of the arbitration being final and binding, took away right of the members of the Informant to approach appellate mechanism. Therefore, the DG concluded that such condition was not equitable in nature and will amount to contravention of Section 4(2)(a)(i) of the Act.
39. In conclusion thereof, the DG found the absolute restriction on transfer by HUDA and the arbitration clause to be in contravention of the provisions of Section 4(2)(a)(i) of the Act.
40. The Commission considered the Investigation Report of the DG in its ordinary meeting held on 25.09.2018 and *vide* order dated 10.10.2018, directed the DG to carry out further investigation. The DG submitted the Supplementary Investigation Report on 15.04.2019. On 08.08.2019, the Commission considered the Main Investigation Report and the Supplementary Investigation Report of the DG and decided to forward a copy of both these Investigation Reports, to the Informant and HUDA, for filing their respective objections/ suggestions thereto. Thereafter, the matter was fixed for final hearing on the Investigation Reports from time to time and the matter was finally heard on 22.10.2020



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and 23.10.2020. The responses of the Informant as well as HUDA, including their oral submissions, are briefly summarised below.

Response/submissions of the Parties

Informant

41. The Informant agreed with the relevant market delineation of the DG. However, as regards the dominance assessment, the Informant objected to the comparison done by DG between HUDA and HSIIDC. It submitted that in doing so the DG ignored that both enterprises are under the functional and financial control and influence of the Government of the State of Haryana and they do not function separately and independent of each other. They in fact, form a cartel, sharing the same resources of the Government of the State of Haryana amongst themselves, and engaged in identically same and similar unfair, discriminatory, restrictive, and dominant trade practices.
42. As regards, assessment of abuse, the Informant submitted that the DG erred, both in law and fact, by finding many of the practices of HUDA to be legally tenable. As regard the issue of whether the contention of the Informant is tenable that the allottee has absolute ownership over the institutional plots allotted by HUDA on freehold basis, for which entire consideration has been paid, the DG's observations and findings have been alleged to be incorrect. The Informant stated that the DG has erroneously opined that the members of the Informant/allottees do not acquire absolute ownership over the institutional plots allotted (sold) to them by HUDA on freehold basis, for which entire consideration amount has been paid upfront; and HUDA while acting as the seller and executing conveyance deed on freehold basis can, in exercise of its statutory power to regulate use of and construction of buildings, impose conditions restraining the allottee/buyer of freehold plot from parting with or alienating or disposing his interest in the plots and the building constructed thereupon by him, without seeking prior permission



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- from HUDA. Alike any other owner of freehold land/plot, the right of ownership of the plot allotted/sold by HUDA on freehold is absolute in terms of Section 10 of the Transfer of Property Act, 1882 and HUDA has no statutory or contractual right to impose any restriction on resale, lease or mortgage of the plot by the allottee/buyer.
43. The Informant stated that even after the sale/transfer of plot on freehold basis, HUDA continues to regulate the user for which the plot had been earmarked and upon failure of the allottee/buyer or his transferees to comply with such statutory obligation, HUDA has statutory power to impose fine/penalty including sealing and demolition of all non-conforming and non-compliant use and constructions of buildings.
44. The Informant relied upon the judgement of the Hon'ble Supreme Court in *DLF Qutab Enclave Complex Educational Charitable Trust Vs. State of Haryana & Ors.*, (2003) 5 SCC622, wherein it was held that regulatory power for planned development and user of land must be construed having regard to its purpose and statutory power relating to regulation of user of land must not be construed to prohibit/restrict transfer of land which does not affect its user.
45. The Informant stated that despite having accepted the position of law that *the term 'freehold plot' is considered as any estate which is 'free from hold' of any entity or authority besides the owner*, the DG got misled and opined that HUDA can impose conditions in the conveyance deed to restrain the allottee/buyer of freehold plot from parting with, alienating, or disposing his interest in the plot and the building constructed thereupon by him, without seeking prior permission from HUDA.
46. The Informant further stated that the DG acted perversely and contrary to law by not finding any fault and illegality on part of HUDA in wrongly following and imposing the pre-modified/pre-amended/deleted/repealed Clause 2, ignoring that HUDA failed to



tender any plausible explanation to the query posed by the Commission in its order dated 31.10.2017 at the *prima facie* stage; and on being similarly questioned by the DG.

47. The Informant further submitted that HUDA wrongly submitted before the Commission that the institutional plots are allotted on highly subsidised rates/prices whereas before the DG, its authorised representative stated otherwise.
48. Further, HUDA also failed to prove the statement made by Mr. R.S. Verma, Administrator (HQ) before the DG that the allotment price was lower than those compared to the prevalent rate at the relevant time. In fact, HUDA and HSIIDC being the only suppliers, following the same and similar practices, there is no market without the supplies made by HUDA and HSIIDC and since the resale is not permitted by either of them, there is no prevalent market rate to compare.
49. The Informant also stated that once the superficial reasons cited by HUDA for following the repealed/deleted Clause 2 of Form D in the conveyance deeds for institutional plots were found to be false, the DG could not have concluded that HUDA did not act illegally in contravention of the law by not following the statutory Form-D prescribed for execution of conveyance deed.
50. Further, the DG erred in not finding out the true intent of the HUDA Act. The DG ignored that in terms of sub-Section (1) of Section 15 of the HUDA Act, the sale/disposal of land/plot by HUDA is primarily governed by the provisions of Sub-section (5) which specifically lead to the only conclusion that on payment of entire (full) consideration amount on account of sale, the land/plot shall vest in the buyer; and accordingly in terms of Regulation 20(i), on payment of full amount of price of the land by the buyer/allottee, HUDA as a seller is by law bound to execute the conveyance deed in the prescribed format, *i.e.* Form-D, which HUDA has failed to execute.



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51. The Informant also relied upon the Hon'ble Supreme Court's judgement in *DLF Qutab Enclave Complex Educational Charitable Trust Vs. State of Haryana & Ors.*, (2003) 5 SCC622, wherein while dealing with a case of community site/plot transferred for establishment of educational institution, the earmarked purpose, the Supreme Court has held as under:

“36. Right of transfer of land indisputably incidental to the right of ownership. Such a right can be curtailed or taken away only by reason of a statute. An embargo upon the owner of the land to transfer the same in the opinion of this court should not be readily inferred. Section 3(3)(a)(iv) of the Act (Haryana Development and Regulation of Urban Area, Act) does not expressly impose any restriction. The same is merely a part of an undertaking. Assuming that a prohibition to transfer the land can be read therein by necessary implication, it is interesting to note that the consequence of violation of such undertaking has not been specified. In other words, if a transfer is made in violation of the undertaking, the statute does not provide that the same would be illegal or the transferee would not derive any title by reason thereof.”

[.....]

“54. In these cases, we are not concerned with the question as to whether the provisions of the Transfer of Property Act are applicable in the State of Haryana or not. Ownership of land jurisprudentially involves a bundle of rights. One of such rights is the right to transfer. Such a right, being incidental to the right of ownership, having regard to Article 300-A of the Constitution of India, cannot be taken away save by authority of law.”

52. In the present case also, the HUDA Act does not expressly prohibit or restrict re-sale or transfer of plots. Even assuming that Sub-section (6) of Section 15 by any necessary implication imposes any such restriction, the Act does not provide any penal consequences in case of transfer of land is made without seeking previous permission of HUDA and in violation/contravention of unspecified terms and conditions to be imposed by HUDA while granting such permission. The DG omitted to consider and appreciate that to construe the provisions of HUDA Act in a manner not intended by the statute would lead to violation of constitutional right to property, when HUDA has miserably failed to show any valid reasons for changing Clause 2 in the conveyance deed contrary to the one



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specified and prescribed in the statutory Form-D. Thus, the DG has ignored that while transferring the plots in question to the buyers/allottees/members of the Informant, HUDA reserved to itself the power to refuse consent/permission for alienation and unless HUDA grants permission, the buyer/allottee has no power to alienate/transfer the property sold to it/him by HUDA under any circumstances. More so, since the impugned clause does not disclose any prior conditions which an allottee is required to fulfil to become competent to alienate or part with, his interest in the plot sold to him, on the basis of the impugned and illegal clause amounts to an absolute restraint on alienation within the meaning of Section 10 of the Transfer of Property Act, 1882. The Informant placed reliance on *Gomti vs. Anari Kaur*, AIR (1929) All 492 wherein one of the terms of the compromise embodied in a decree was that the party to whom the house was conveyed under it was not at liberty to transfer it without the consent of the other party to that compromise decree, such a condition was held to be void as being an absolute restraint upon alienation and the house could be transferred in spite of that condition.

53. The Informant also objected to the DG's reliance upon the judgement in *Indu Kakkar vs. HSIIDC* (1999) 2SCC37 of the Hon'ble Supreme Court and on the case of *Omnoplast Pvt. Ltd. vs. HSIIDC* (2015) 1 PLR 662, decided by the Hon'ble Punjab & Haryana High Court on the basis of decision in *Indu Kakkar*, stating that the same is not applicable to the facts of the present case. *Firstly*, unlike in the said judgements, the impugned Clause 2 in the conveyance deeds which is *ex facie* contrary to the statutory Form-D is illegal and cannot be binding and enforced against the law. *Secondly*, in the aforesaid judgements, the condition in the conveyance deed for resumption of the plot on non-utilisation was challenged but was upheld to be in accordance with Section 31 of the Transfer of Property Act 1882, thus issue of absolute restraint under Section 10 of the said Act was neither involved nor decided. *Thirdly*, the aforesaid cases were not decided in the realm of competition law involving issue of abuse of dominant position by an enterprise.



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54. Further, the Informant contended that despite holding HUDA to be dominant, the DG ignored that the buyers/allottees have no bargaining power at any stage and do not have any other option but to sign on dotted line contracts and to silently accept all unfair, unconscionable or illegal terms and conditions. The Informant relied upon *NTPC Ltd. Vs. Denonar Services Pvt. Ltd.*, 2010 (116) DRJ 648 (DB) in this regard wherein the Hon'ble Delhi High Court, after considering various judgements and rules of interpretation has reiterated that if a contract or a clause in a contract is found unreasonable or unfair or irrational, one must look to the relative bargaining power of the contracting parties. In dotted line contracts there would be no occasion for a weaker party to bargain or to assume to have equal bargaining power and in such contracts, the party enters into a contract with unreasonable or unfair terms contained therein having no option but to sign the contract.
55. Based on the aforesaid assertions, the Informant submitted that the impugned Clause 2 included by HUDA in the conveyance deed is illegal (i) being contrary to the statutory Form-D prescribed for execution of conveyance deed; (ii) being contrary and violative of Section 10 and 31 of the Transfer of Property Act 1882 and Section 23 of the Indian Contract Act 1872; and (iii) for being violative of the consumers rights protected under the Competition Act, therefore impugned Clause 2 in the conveyance deeds is liable to be struck down by the Commission.
56. The Informant also stated that despite HUDA being a statutory body bound to act by law, its officer deposed falsely and submitted such false facts in writing, to influence the proceedings before the Commission as well as during the investigation before the DG. In view thereof, the Informant requested that the Commission exercise its power under Section 45 of the Act in the interest of justice and impose exemplary fine upon HUDA, besides imposing penalty under Section 27 of the Act. Besides these prayers, the Informant has *inter alia* sought a direction to HUDA for modifying the conveyance deeds in accordance with statutory Form-D prescribed under the HUDA Regulations as it stood



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amended on the date of execution of respective conveyance deeds and to cancel all such conveyance deeds executed by it containing the illegal clause 2/condition.

HUDA/HSVP/OP

57. HUDA/HSVP raised a preliminary objection to the maintainability of the present case against it due to lack of jurisdiction with the Commission stating that *firstly*, it is not an enterprise under Section 2(h) of the Act because it is carrying on such sovereign functions which cannot be delegated; *secondly*, it works as a 'statutory authority' defined under Section 2(w) of the Act. It is stated to be a body corporate established under Haryana Shehri Vikas Pradhikaran Act, 1977 (State Act) for the purposes of regulating the use of land (product) in order to prevent ill-planned and haphazard urbanisation in or around towns in the State of Haryana. Thus, while exercising its sovereign functions and administering the directions and policies of the State Government, it cannot be held to be an Enterprise under the provisions of Section 2(h) of the Competition Act, 2002. In the absence of any jurisdiction to direct the investigation into the matter, the Investigation Reports dated 06.07.2018 and 12.04.2019 submitted by the DG are alleged to be *void-ab-initio*, having no value in the eyes of law.
58. The purpose of HUDA is to regulate the market of land use and to develop the land throughout the State of Haryana in such a manner so that ill-planned and haphazard urbanisation does not occur in future. Further, it functions on a hidden/cross-subsidy model whereby it allots or auctions the land to create a healthy living environment catering to various needs of the society.
59. It is submitted that there are many other similar authorities, such as Delhi Development Authority working in Delhi and number of such authorities working pan India with similar aim and objective of creating a holistic society where various facilities are



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available to the residents. DDA also offers institutional sites within Delhi and restrict subsequent sales of such sites.

60. It is submitted that HUDA has been allotting institutional plots to various eligible applicants in terms of the policy of the State Government of Haryana. One of the basic conditions of the allotment of institutional plots is that the successful applicants shall not transfer the institutional plots to third parties since the transfer of institutional plots by HUDA has all along been special category arising out of 'state subsidy'. HUDA allots institutional plots whereby consideration for transfer of land is highly subsidised and transfer of such land to third parties at market driven prices will defeat the intent of the policy of the state. Therefore, HUDA is not imposing any unfair or discriminatory conditions in purchase of goods or services or price in purchase or sale (including predatory pricing) of goods and services under Section 4(2)(a) of the Act.
61. HUDA/HSVP further submitted that it frames its own policies in accordance with the rules and regulations already framed by the State Government. It works for the overall development of urban estates without the objective of making profit out of the transactions like sale, lease, or mortgage of land. The sites/plots/land are allotted at marginalised prices which are way lower than the market prices in the area. The lands are thus allotted to only those applicants who fulfil certain eligibility criteria for a particular type of land.
62. It is submitted that the whole reason behind not allowing transfer of land allotted to an original allottee, especially sites allotted for institutional purposes is to prevent investment in such lands to be used for commercial benefits and profit making. HUDA submitted that it restricts the transfer for the greater good of the society at large and if such policies are not framed then the land being acquired for particular purpose by HUDA will never be used for that purpose. Rather it will be used as a tool for profit making by original allottees. The present case has been filed by a society which is having 7 members



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as per its constitution attached with the information and they are trying to misuse the jurisdiction of the Commission while making prayers which are contrary to law and are not maintainable in the present case.

63. Based on these assertions, HUDA submitted that the Commission may seek an opinion from HSVP/OP regarding the effect of passing any order on its policies and works to be implemented in near future.
64. While explaining the overall background, HUDA stated that the Haryana Shehri Vikas Pradhikaran Act, 1977 herein after referred as the HSVP/HUDA Act and the Haryana Urban Development (Disposal of Land & Buildings) Regulations, 1978, hereinafter referred as the HUDA Regulations were enacted to provide for the establishment of the Authority for undertaking urban development and the local development in the State of Haryana. Section 15 of the HSVP Act read with the HUDA Regulations provide for the disposal of land either by way of allotment or auction. The regulations were enacted under the powers conferred by Section 54 of the HSVP Act.
65. It is submitted that in Civil Appeal No. 7929 of 2015 titled as *Tata Steel Limited V State of Jharkhand and others*, (2015) 15 SCC 55, the Hon'ble Supreme Court held that
- “In substance, the State Government is authorized to constitute an “authority” for any area or areas for development and promotion of industries by a notification.*
- ...
- In our opinion, the expression "allotment" in the context only means a formal administrative decision of the authority to lease a particular piece of land in favour of an applicant who is desirous of establishing industry thereon.”*
66. On the applicability of Transfer of Property Act, 1882, the Hon'ble Supreme Court further held that:



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“It is almost becoming a forgotten proposition of law that the Government is not bound by the Transfer of Property Act, 1882, when it seeks to transfer any land vested in it or any interested therein.

...

When Government transfers land or any interest therein to any person, such a transfer is not governed by the Transfer of Property Act, 1882. The rights and obligations flowing from the transfer of either a piece of land or an interest therein by the government cannot be determined on the basis of the rights and obligations specified under Transfer of Property Act, 1882. They are to be ascertained only from the tenor of the document made by the Government evidencing such a transfer. The rights, privileges and obligations of any grantee of the government would be completely regulated by the terms of the grant, even if such terms inconsistent with the provisions of any other law.”

67. It is, therefore, an established position of law that the terms and conditions as prescribed in the allotment letter as well as in the conveyance deed are constitutionally valid as the same are in accordance with the very purpose regulating urban development and preventing haphazard constructions, as prescribed in the HSVP Act.
68. It is submitted that the transfer of any allotment irrespective of whether it is freehold or leasehold, is done under Forms given in HUDA Regulations and such allotment would depend upon the nature of the plot as well as the terms of the policy under which it is covered and allotted. In so far as ownership is concerned, in case of the plot being allotted on freehold basis, *i.e.* where only the price has been charged, the allottee is to execute a conveyance deed after payment of full price under which HSVP grants and conveys all the pieces and parcels of plot subject to exceptions, reservations, conditions and covenants contained in the conveyance deed.
69. Transfer of Property Act, 1882 is not applicable to the present case because the policies of HSVP and conveyance deed are regulated by the provisions of HUDA Act which being a special act overrides Transfer of Property Act, 1872.



70. It is submitted that Clause 12 of Form 'C' of HUDA Regulations read with provisions contained in sub-sections 5 and 6 of Section 15 of HSVP Act puts an encumbrance on the allottee that it cannot transfer its rights in the land or building except with the previous permission of HSVP and the regulations drawn thereunder. These provisions have from time to time been tested by the Hon'ble High Court of Punjab and Haryana and the Hon'ble Supreme Court of India and have thus attained finality. The restrictions in the conveyance deeds have been placed in confirmation with the said provisions of HSVP Act and the regulations framed thereunder. Therefore, in the absence of any challenge to the said provisions, the clauses of the conveyance deed cannot be held to be discriminatory or unfair in any manner.
71. As a matter of policy, allotment of plot on freehold basis means ownership subject to terms and conditions of the agreement executed between HUDA and the members of the Informant. The Informant was fully aware of these restrictions at the time of applying for such plots as the same were clearly stated in the invites sent out by HUDA.
72. It is submitted that there are clear conditions prescribed even in the allotment letters given to the members of Informant. The institutional plots on freehold places are allotted by HUDA on the following terms and conditions as prescribed in the allotment letter of plot number 28-P, Sector 44, Gurgaon:

“Condition No. 11:

In case the allottee does not utilise the land for the purpose for which it was allotted, it shall revert back to HUDA and the allottee shall be paid the amount deposited by him after deducting the 10% of the consideration money. However, amount received on account of interest and other dues payable in respect of sale of land or building or both shall not be paid back.”



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73. It is submitted that the terms and conditions of the allotment letter as well as the Conveyance Deed were very well known to the applicants. The allottees had agreed to the said terms and conditions at the time of executing the conveyance deed. Therefore, after a lapse of more than 10 years the allottees cannot rescind away from the contract agreed between the parties. Further, the Informant should not be allowed to abuse the process of law and should be prevented from reaping undue benefits out of the allotted piece of land by way of subsequent sale or transfer.
74. It is submitted that the allottees have the option of re-sell of the allotted plots back to HSVP or to challenge the order of rejection of transfer in an appeal in accordance with the provisions of 1977 Act.
75. These institutional plots are allotted only to certain entities like Government Organisations, Central Government Departments, Boards, Corporations, PSUs, NGOs and Private Companies with specific usage of establishing corporate office. The objective of seeking allotment should be the setting up of institutes such as research and development centres, education and training centres and offices of NGOs and Professional Groups which will help in benefiting the society at large, which is further proved from the fact that institutional plots are also allotted for educational institutional and community facilities like police station, post office, religious places, *etc.*
76. However, realising that absolute restriction on transfer of the allotted land was harsh towards few allottees who were not able to carry on with the work on the allotted site, the State Government decided to allow transfer of 75% allotted land by way of lease. It was gradually realised that certain allottees required to mortgage the land to raise loans. Therefore, the State Government *vide* further orders allowed mortgage of land with banks but first charge being in favour of HSVP and second in favour of Bank. Lastly, in the year 2009, the State Government changed its policies and allowed sale of 49% of the allotted land that too with prior approval of Chief Minister-cum-Chairman, HUDA.



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77. The policies are thus being modified from time to time only to benefit the allottees and in accordance with the change in the circumstances and economy of the State of Haryana by the State Government and being implemented through HSVP as a sovereign. Therefore, these plots cannot be re-allotted or transferred to any third party with the sole purpose of reaping undue profits from the land defeating the sole purpose of allotment by HSVP.

Observations and analysis of the Commission

78. The Commission has given a careful consideration to the rival contentions put forth by the parties, both in their written submissions as well as in oral arguments advanced in the final hearing held on 22.10.2020 and 23.10.2020.
79. Before going into the specific allegations of abuse, the Commission notes that HUDA has raised preliminary objection to the jurisdiction of the Commission in entertaining the present matter. HUDA has argued that while exercising its sovereign functions and administering the directions and policies of the State Government, it cannot be held to be an 'enterprise' under the provisions of Section 2(h) of the Competition Act, 2002 and further that HUDA being a statutory authority is not amenable to the jurisdiction of the Commission.
80. The Commission observes that the objection raised by HUDA is bereft of any merits in view of the settled decisions of the Commission and the wide ambit of the definition of enterprise as laid down under Section 2(h) of the Act, which is as extracted hereunder:

“A person or a department of the Government, who or which is, or has been, engaged in any activity, relating to the production, storage, supply, distribution, acquisition or control of articles or goods, or the provision of services, of any kind, or in investment,



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or in the business of acquiring, holding, underwriting or dealing with shares, debentures or other securities of any other body corporate, either directly or through one or more of its units or divisions or subsidiaries, whether such unit or division or subsidiary is located at the same place where the enterprise is located or at a different place or at different places, but does not include any activity of the Government relating to the sovereign functions of the Government including all activities carried on by the departments of the Central Government dealing with atomic energy, currency, defence and space.”

81. While examining whether an entity is an enterprise for the purposes of the Act, regard be had to its functional aspects as opposed to its form or constitution. Undoubtedly, HUDA established under the HUDA/HSVP Act, 1977 is a statutory authority *inter alia* mandated to perform certain statutory and regulatory functions, within the ambit of such Act. But nevertheless, all its functions may not be classifiable as statutory functions more so of a sovereign nature, especially when it allots various types of plots to third parties for a consideration. What is a sovereign function is no more *res-integra* and the Hon'ble Supreme Court in various judgments has given its finding on the same.
82. In *Agricultural Produce Market Committee vs. Ashok Harikuni & Anr*, (2000) 8 SCC 61, the Hon'ble Supreme Court held as follows: “*So, sovereign function in the new sense may have very wide ramification but essentially sovereign functions are primary inalienable functions which only State could exercise. Thus, various functions of the State, may be ramifications of 'sovereignty' but they all cannot be construed as primary inalienable functions. Broadly it is taxation, eminent domain and police power which covers its field. It may cover its legislative functions, administration of law, eminent domain, maintenance of law and order, internal and external security, grant of pardon. So, the dichotomy between sovereign and non-sovereign function could be found by finding which of the functions of the State could be undertaken by any private person or body. The one which could be undertaken cannot be sovereign function. In a given case, even*



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in subject on which the State has the monopoly may also be non-sovereign in nature. Mere dealing in subject of monopoly of the State would not make any such enterprise sovereign in nature. Absence of profit making or mere quid pro would also not make such enterprise to be outside the ambit of 'industry'."

83. A distinction between sovereign and non-sovereign function of the state was elaborated by the Hon'ble Supreme Court in *N Nagendra Rao vs. State of AP* (AIR 1994 SC 2663), wherein the Hon'ble Supreme Court held that *"one of the tests to determine if the legislative or executive function is sovereign in nature is, whether the State is answerable for such actions in courts of law. For instance, acts such as defence of the country, raising (the) armed forces and maintaining it, making peace or war, foreign affairs, power to acquire and retain territory, are functions which are indicative of external sovereignty and are political in nature. Therefore, they are not amenable to jurisdiction of ordinary civil court. No suit under Civil Procedure Code would lie in respect of it. The State is immune from being sued, as the jurisdiction of the courts in such matters is impliedly barred."* The court further emphasised that: *"[i]n a Welfare State, functions of the State are not only defence of the country or administration of justice or maintaining law and order, but it extends to regulating and controlling the activities of people in almost every sphere, educational, commercial, social, economic, political and even marital. The demarcating line between sovereign and non-sovereign powers, for which no rational basis survives, has largely disappeared. Therefore, barring functions such as administration of justice, maintenance of law and order and repression of crime etc. which are among the primary and inalienable functions of a constitutional Government, the State cannot claim any immunity."* Thus, the sovereign functions have to be primary and inalienable functions, which include administration of justice, maintenance of law and order, defence and repression of crime, etc.
84. In the present case, the allotment of institutional plots is undertaken in the State of Haryana, even by private developers. Thus, such an activity is not an inalienable function



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of the State of Haryana, relatable to a sovereign function, merely because such an activity is being undertaken by HUDA under the statute passed by the state legislature.

85. The Commission further observe that similar authorities of other states have been looked into by the Commission for the alleged contravention of the provisions of the Act. In the case of *Satyendra Singh vs Ghaziabad Development Authority* (Case No. 86 of 2016), the Commission had held as under:

Based on the foregoing, the Commission is of the view that there is no doubt that the activities performed by GDA are economic activities and several of them are being carried on for a commercial consideration. In the present matter, the OP is rendering services of development and sale of EWS flats for a charge. This is not an inalienable function of the State. Hence, GDA is an enterprise under Section 2(h) of the Act. As a necessary corollary, the argument put forth by the OP that it cannot not fall within the purview of the jurisdiction of the Commission as it is not an 'enterprise', is devoid of merit and the same is not accepted.

86. Having examined the objections raised by HUDA on the touchstone of various pronouncements as above, the Commission unhesitatingly holds that all statutory or regulatory functions performed by HUDA, within the mandate of the HUDA Act, cannot be classified as sovereign functions. The exception claimed by HUDA is not *ipse dixit*, and requires a closer examination on a case by case basis. Given the facts and circumstances of the present case and the function of allotment of institutional plots as regards which the information has been filed before the Commission, HUDA is undoubtedly an enterprise. For the foregoing reasons, the Commission repels the contention of HUDA/OP that it is not an enterprise within the meaning of the Act and not amenable to the jurisdiction of the Commission under the Act.



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87. As regards the specific allegation of abuse of dominant position by HUDA as raised in the information, the Commission at the outset notes that neither the Informant nor HUDA have joined issues either on the delineation of the relevant market, or that HUDA is dominant in such market as has been done by the DG in its detailed analysis in the investigation report. The Commission agrees with the said assessment made by the DG and proceeds to examine certain findings of abuse by HUDA rendered in the investigation report.
88. The Informant has vehemently contended that the policy of HUDA (as contained in Clause 2 of the allotment letter) in not allowing the owners of institution plots to transfer/sell is an instance of abuse of dominant position by the said party in terms of Section 4(2)(a) of the Act, besides being incongruent with Section 10 of the Transfer of Property Act, 1882, being an absolute restraint and hence void. HUDA, on the other hand, has justified such restrictions on the anvil of public interest. HUDA has stated that such institutional plots have been allotted for specific purposes, at a price much below the then prevailing market prices and the owners of such plots cannot be allowed to profiteer from the sale/transfer of such plots. HUDA has already permitted leasing to the extent of 75% of such plots and structures built thereon, to the owners. From the inception, it was never the objective of HUDA to allow sale of such institutional plots. For this precise reason these plots were given to seekers, satisfying the eligibility conditions, at concessional rates. Thus, according to HUDA, there is no abuse of Section 4 of the Act. It has contended that other authorities like Delhi Development Authority, also do not permit transfer of institutional plots, which are allotted with a specific purpose and there is a well-considered policy behind it and such policy of HUDA should not be found fault with in these circumstances.



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89. The Commission notes that the investigation has given a finding on an appreciation, both of the relevant provisions of the HUDA Act, 1978 as well as that of the Transfer of Property Act, 1882, as also clauses of the brochure, the allotment letter and the subsequent conveyance deed executed by HUDA, in respect of such plots, to say that conduct of HUDA in denying transfer has resulted in violation of Section 4(2)(a) of the Act. The Commission, however, in view of the submissions made by HUDA of it being a policy matter with an avowed object, refrains to give any determinative findings on this aspect. While the Informant had strongly canvassed that not allowing its members to transfer the plots is in the face of the provisions of the Transfer of Property Act, 1882, HUDA has contended that the subject matter of plots is governed by the provisions of the HUDA Act, which is a special law governing the field and the former Act will only have limited applicability.
90. The Commission does not propose to enter this thicket, to hold as to which Act, may have primacy over the other, or as to whether the conveyance deed or other documents executed/issued by HUDA are violative of provisions of any of the Acts, enumerated above. HUDA has submitted that the institutional plots were allotted at prices which were way lower than the market rates. The Commission is persuaded by the submissions made by HUDA that the purpose of allotment of institutional plots, in the facts and circumstances of the present case, was not to allow the allottees to transfer them subsequently, with a view to earn profits out of the same. This important fact in the view of the Commission cannot be lost sight of.
91. The Commission also notes the submissions of HUDA, advanced during the final hearing, that it is actively seized of the issue at the highest level of decision-making and active deliberations upon certain policy issues in relation to the institutional plots are being undertaken to iron out the issues involved. It now transpires, based on an application dated 10.12.2020, filed by the Informant that HUDA, post the final hearing



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in the matter, has issued a memo dated 26.11.2020, wherein it has permitted transfer of ownership of institutional plots, by specifying certain conditions therein. Further, it has been stipulated that such transfer shall be allowed to eligible entities by charging transfer fee equal to 50% of the difference between allotted rate and prevailing collector rate of that area. The Informant has assailed the said memo and sought a stay of operation of the said memo under Section 33 of the Act and has sought an opportunity of hearing in relation to the said memo, before passing of the final order. The Informant has *inter alia* contended in its application that the aforementioned memo is an instance of abuse of dominant position by HUDA, and HUDA has issued the same without referring the matter to the Commission under Section 21 of the Act. Further, it has been stated that charging of transfer fee is applicable in respect of institutional plots issued on leasehold basis as per regulations issued by HUDA and cannot be made applicable in respect of freehold plots, as such a provision is not available in the regulations. The Commission in this regard, is of the view that since the Commission agrees to the submissions made by HUDA, that it has not permitted transfer of the institutional plots in public interest and as a matter of policy to prevent unjust enrichment and profiteering by allottees of such plots, therefore now to dilate separately on the various aspects of the memo and its applicability whether on leasehold or freehold institutional plots as contended by the Informant, is not germane in the facts and circumstances of the present case.

92. With respect to the findings of the investigation on the aspect of abuse emanating out of the allegedly one sided “arbitration clause” as contained in the conveyance deed, the Commission notes that the Informant has not placed any significant emphasis on the same while advancing its arguments. The Commission is, however, of the view that aspects relating to appointment of arbitrator, *etc.*, can be suitably dealt under the provisions of Arbitration and Conciliation Act, 1996.



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93. In view of the discussions as above, the Commission holds that HUDA cannot be said to have contravened the provisions of Section 4 of the Act. The Secretary is directed to forward a copy of the order to the Informant and HUDA.

Sd/-
(Ashok Kumar Gupta)
Chairperson

Sd/-
(Sangeeta Verma)
Member

Sd/-
(Bhagwant Singh Bishnoi)
Member

New Delhi
Date: 19/01/2021