Real Estate and Competition Law: Uneasy Companions

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The regulation of real estate sector is now a vibrant reality. Even before coming into force of the Real Estate (Regulations and Development) Act, 2016 (RERA) w.e.f. May 1, 2016, the hopes of the countless victims of anticompetitive practices in real estate sector were soaring high with the powers of enforcement having been given to the Competition Commission of India. However, the cases which presented themselves before the Commission did not really help these hopeful consumers in a way they had dreamt.

The author, who drafted regulations for the functioning of the CCI and established the competition law investigation framework for the country as the very first Director General of the functional Competition Commission of India, was also the Head of Antitrust Division , in the beginning, when the CCI was attempting to finalise matters after submission of the report of DG, looks at the journey of competition law in real estate sector in the country. He is, presently, a practicing advocate and the Chairman of KK Sharma Law Offices.

According to the newspaper reports[1] of July 23,2017, some builders are reported to have moved High Court challenging the constitutional validity of the provisions of the Real Estate (Regulation and Development) Act, 2016 (RERA) which came into effect on May 1, 2017. This reminds us of the initial phase of the establishment of the competition law in India. First, the validity of the Competition Act, 2002("Act") was challenged before different judicial authorities and, later, serious doubts were expressed very vocally by various stakeholders about the implementation of competition law leading to a possible negative impact on the then sparkling success story of India's economic growth as well as the capacity of the Competition Commission of India ('CCI' or 'Commission') . Indeed, piloting any regulation for regulating any market players is not easy. It has to meet some resistance in the economy and society, from those whom it seeks to regulate, almost as a matter of rule. The story of enforcement of different regulations including introduction of competition law in different countries has, generally, followed the same route. So we should hardly be surprised with these sequence of events. Amongst the sectors which have grown substantially with the global gaze on the unfolding story of India's

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1 http://www.hindustantimes.com/india-news/rera-deadlock-homebuyers-in-limbo-as-builders-move-court-ahead-of-deadline-for-registering-projects/story-GCtH7nMb5cbHIMRvcNMyDJ.html

growth, the real estate sector has been a prominent one. On account of her developmental needs, India witnessed huge economic growth in various sectors including this sector of real estate. Traditionally, various state governments had a substantial role in real estate development by way of having different development authorities in the states that were tasked with the assignments of making an orderly development of real estate in their respective states.

These development authorities did achieve significant progress in urban development sector over a period of time. It has to be admitted that these bodies/ organisations did make a substantial contribution in the urban developmental landscape of the country. When we travel, across the length and breadth of the country, we do find organised colonies developed by these State Housing Boards or Development Authorities. Further, it is a trend that accommodations provided by various development authorities of different states became prized possessions and, in some cases, lots of land and apartments built by these authorities and allotted to different users/consumers for amounts of consideration, which are certainly competitive compared to other private organisations, acquire so much of market value almost immediately after allotment that these are being treated like lottery almost with a good justification. May be, either because there is a considerable delay in the actual allotment of properties by the Delhi Development Authority (DDA) after floating of schemes and the price of the property may rise substantially, in the intervening period, or the fact that the private players are out for making big margins on such transactions, makes these auctions/ allotments really attractive compared to other dwelling units but the premium nature on these properties survive.

On the other side of the spectrum are private real estate developers, who purchase big pieces/chunks of land from the original land owners/farmers and make a lay out and maps of big societies carving out some roads, community centre, schools and in some case adequate parks, get them approved by local authorities and start construction. These builders/developers are essentially taking advantage of the gap between demand and supply in real estate.

There was a substantial boom in this activity almost across the country. Over a period of time, it has found to be extremely lucrative industry in which, all people who wanting to have a stake in the pie showed up. This included those who have to make some type of positive contributions and others who are making a negative contribution. The negative contribution signifies 'nuisance' value of various people such as underworld dons or some local politicians having a different agenda or some other inappropriate elements of society.

Over a period of time, the tongs were out and all these developers and builders started indulging in newer and newer methods of making more and more profits at the cost of helpless customers. One such method was to purchase a small piece of land, showcase the proposed project through advertisements, conduct Bhoomi Poojan, give a gala dinner party and, sometimes, flaunt the approvals obtained, which helps them in collecting money. These tactics, helped developers and builders in collecting almost the entire sum of consideration for the future dwelling units or plots from poor customers, much before the actual construction began. These funds, in certain situations, were misused, by directing them towards the purposes for which they were not intended. Result of all these manipulations was that, despite there being some activity at the site in some cases, the building projects were getting delayed frequently and substantially. The customers had to be

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totally at the mercy of these builders and developers hoping to get the promised piece of shelter some time in future. Methods of exploitation had no end. These kept on increasing with time in number and improving in novelty. These could be charging them for a higher floor area but, actually, giving a much less floor (carpet) area. This practice was done by way of apportioning the built up area utilised on common facilities such as staircase, lifts etc. on the actual usable area of residents in quite arbitrary and opaque manner. This was a very weird situation where a buyer would be getting less carpet area than what he actually paid for but no where to go for redressal of such grievances. Similarly, the amounts of interest being charged from the people who had booked the flats for the future projects which had not yet come into existence, and which were only on paper, used to be extremely huge, if a potential buyer was missing the deadline of instalments. On the contrary, if the possession of the apartment or plot was delayed, the person booking the property would hardly get anything except some a little token compensation. This would not even work out to an equivalent of interest @ 1% or 2% per annum. The unfairness of these agreements was too stark and obvious.

There was no authority to regulate the real estate sector due to which if somebody has to seek a redressal for the injury suffered because of these big developers and builders, he would have no option other than filing a case under consumer law. The time taken in the consumer fora for reaching finality was long. Further, if we look at the sector as a whole, the relief given to a customer would only be individual and not help others, having suffered in similar circumstances on the same issue, at all. Moreover, the cost and time of litigation would deter majority of the poor people who had already invested their life savings in their dreams and had no more resources to take a fight to iron out these incongruities of the system.

The coming into force of the competition law, which had powers to deal with such market wide distortions and could not only deal with abusive conduct of a dominant enterprise but also take head on 'any practices carried on' or 'decisions taken by' a group of people engaged in production or supply of similar goods or services if these were resulting in market distortions, brought substantial cheers to such teeming millions. It was a ray of hope in, otherwise, a tunnel of darkness.

It was in this backdrop that a matter dealing with exactly the same issues landed before the newly empowered competition agency for getting some solace and see if it would live up to the hopes of many to end such situations of arbitrariness and one-sidedness. This, one Belaire Association, a group of purchasers of flats from DLF, filed an information before the Commission alleging abuse of dominant position by DLF in Gurgaon. It was one amongst the first few cases filed before the CCI under the Competition Act, 2002 ('Act'). After

investigation of Director General (DG), it was indeed brought on record that DLF was indulging in such practices.

Interestingly, it was not as if it was only DLF which was indulging in these practices but, as every one knew, these were near identical agreements being used by all the builders and developers-big or small. A while before the final view being taken by the Commission on the issue, one staffer from the Commission, after taking liberty of the Commission, submitted that the matter could be dealt either as a case of abuse of dominant position as it was filed before the Commission or the Commission can take note of these practices being industry wide and snoop down on these practices as a whole under section 3 of the Act . For a ready appreciation of the position, Section 3 of the Act is being extracted below for a ready reference:

"Anti-competitive agreements

3. (1) No enterprise or association of enterprises or person or association of persons shall enter into any agreement in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, which causes or is likely to cause an appreciable adverse effect on competition within India.

(2) Any agreement entered into in contravention of the provisions contained in subsection (1) shall be void.

(3) Any agreement entered into between enterprises or associations of enterprises or persons or associations of persons or between any person and ***enterprise or practice carried on, or decision taken by, any association of enterprises or association of persons,*** *including cartels, engaged in identical or similar trade of goods or provision of services, which—*

(a) directly or indirectly determines purchase or sale prices;

(b) limits or controls production, supply, markets, technical development, investment or provision of services;

(c) shares the market or source of production or provision of services by way of allocation of geographical area of market, or type of goods or services, or number of customers in the market or any other similar way;

(d) directly or indirectly results in bid rigging or collusive bidding, shall be presumed to have an appreciable adverse effect on competition: Provided that nothing contained in this sub-section shall apply to any agreement entered into by way of joint ventures if such agreement increases efficiency in production, supply, distribution, storage, acquisition or control of goods or provision of services. Explanation.—For the purposes of this sub-section, "bid rigging" means any agreement, between enterprises or persons referred to in sub-section (3) engaged in identical or similar production or trading of goods or provision of services, which has the effect of eliminating or reducing competition for bids or adversely affecting or manipulating the process for bidding....." **(Emphasis Added)**

From the abovementioned section, with the definition of 'agreement' having been given very wide in the Act under Section 2 of the Act, it can be safely inferred that if there are some practices, amongst people engaged in the production or supply of similar goods or services, which are anti-competitive, there is no need to prove dominant position and the practices can be covered, under section 3 of the Act. This gives a much bigger platform and handle to CCI than what hitherto would be available to it if section 4 of the Act were to be invoked in such industry wide practices. This becomes easier, if we keep a close watch on the discussions within the respective industry bodies . In this case *Confederation of Real Estate Developers' Associations of India* (*CREDAI*) is the apex industry body for builders and developers. Thus, in that alternative, there was a possibility that treating the

anti competitive conduct as a 'practice'. The Commission could have banned all the anti-competitive practices and, thereafter, would have taken care of the violations and applied penalty under Section 42 of the Act for contravention of the orders of CCI. This way, it could have reformed the entire real estate sector in one go. This would have also meant, a closure of the information received against DLF as not belonging to category of abuse of dominant position. Simultaneously, starting a new *suo motu* case for holding such practices as anti competitive and bad in law. This would have provided the appropriate opportunity to the Commission to take action, after substantial and high awareness campaign, on those still indulging in these practices, if some market participant were to do that. If some market players d to follow the same practice, penalty can visit them on account of their not being compliant with the provisions of the Act and the order of the Commission having been passed holding the 'practice' as anticompetitive under the Act.

It was to do that, the matter as it came before the Commission would have had to be closed as it was under section 4 of the Act and the Commission would have had to initiate *suo motu* proceedings afresh under section 3 of the Act against these practices as a whole in the sector for which it had ample powers. If this course was to be followed, after banning these practices, the Commission had to merely widely publicize the order of the Commission and sit pretty after that. If any further Information was to be received, after these advertisements and a suitable time window having been given therein, the only thing Commission had to do was to deal it as a contravention of the orders of the Commission and impose penalties under Section 42 of the Act. It was respectfully submitted to the Commission, in the presentation made before it, that the flip side of imposing penalty on DLF (which was yet to be imposed) was that all the remaining builders in Gurgaon would have got a kind of full reprieve from any future action by the Commission as they would not be dominant after DLF was held to be dominant in this relevant market. For some reasons, the Commission did not deem it appropriate to agree to the views of that staffer. So that was not to be.

What actually happened is very much in public domain. After considering the report of DG, on 12.08.2011, the CCI passed the penalty order under Section 27 of the Act imposing a penalty of Rs. 6.3 billion on DLF. The Commission held DLF to be a dominant enterprise in the relevant market of high end apartments in Gurgaon. The order stated that:

> *13.5 There appear to be no mitigating factors for taking a lenient view as the abusive practices referred to above have been carried with the object of undue economic gains and business profits. On the other hand, the consistent practice of executing unfair conditions and holding out false representations and exploiting the dominant position has come on record which are certainly aggravating factors. In the view of the Commission, the conduct of the OP-1 in abusing its dominant position requires to be taken very seriously and thus, the Commission is required to adopt a deterrent approach so that recurrence of such conduct is stopped.*
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> *13.6 The facts of this case and the conduct of the OP-1, as discussed above, particularly the size and resources of OP-1 and the duration during which this abuse has continued to the advantage of DLF Ltd. and to the disadvantage of consumers, warrant imposition of a heavy penalty. Keeping, in view the totality of the facts and circumstances of the case, the Commission considers it appropriate to impose penalty at the rate of 7% of the average of the turnover for the last three preceding financial years on OP-1. Therefore, in*

exercise of powers under section 27 (b) of the Act, the Commission imposes penalty on DLF Ltd. as computed below: Penalty rounded off to nearest number Rs 630 crores (or Rs 6.3 billion)[2]

The very first step in this process, of dealing with such matters wherein not only the dominant enterprise but all the market participants are indulging in anti-competitive practices, of delineating relevant market leaves the door for mischief wide open. Once a builder in the same relevant market is aware that another enterprise has been held to be dominant in that particular relevant market, he knows that in future and in short run, he cannot be held guilty of any abuse of dominant position and is free to continue to indulge in anticompetitive conduct as he pleases.

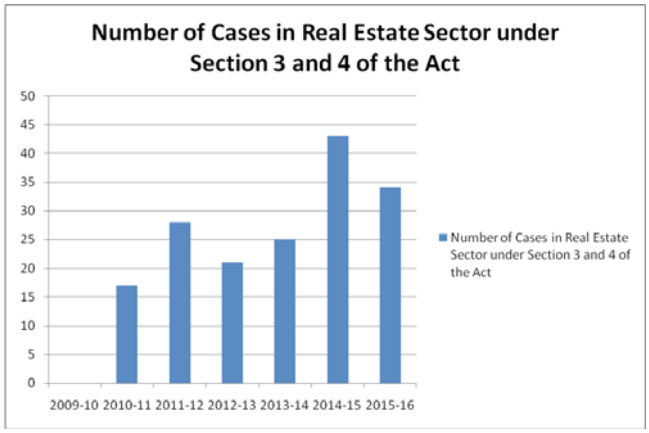
Some of the readers may recall that the author had commented on the order of the CCI, at that time, in the Competition Law reports (CLR). In that article, the decision of the Commission, to keep relevant market as narrow as Gurgaon, was discussed. In that write-up, in the issue of July-August 2011, it was surmised as to whether the action of CCI to punish one would not, indirectly, give a certificate to all the others.

It indeed happened that, in the wake of DLF order, a large number of cases from the real estate sector started clammering for the attention of CCI. The pendency of the matters with the CCI, in the beginning, was substantially high on account of real estate matters only. This slowly started coming down after realising that after DLF matter, other builders in Gurgaon cannot be penalised. The chart and the diagram below show the trend of real estate matters before CCI as worked out from the figures from the annual reports of CCI:

S. No	*Sector*	*2009-10*	*2010-11*	*2011-12*	*2012-13*	*2013-14*	*2014-15*	*2015-16*	*Total*
1.	Real Estate	0	17	28	21	25	43	34	**168**
2.	Financial Sector	17	9	5	4	8	7	3	**53**
3.	Media & Entertainment	4	15	11	10	4	3	5	**52**
4.	Pharmaceuticals & Health Care	3	3	3	6	9	9	9	**42**
5.	Petroleum/Gas	4	3	3	5	3	5	13	**36**
6.	Information Technology & Services	2	3	4	4	6	4	7	**30**
7.	Automobiles & Components	4	1	3	3	7	8	2	**28**
8.	Railways	2	3	2	1	6	8	1	**23**
9.	Civil Aviation	6	3	1	3	3	1	6	**23**
10.	Power	3	1	4	0	3	5	1	**17**
11.	Chemicals & Fertilizers	3	0	0	2	6	4	1	**16**
12.	Coal	0	1	1	5	3	1	4	**15**
13.	Iron & Steel	3	1	3	2	2	1	0	**12**
14.	Miscellaneous	30	16	24	28	30	29	35	**192**
Total	**81**	**76**	**92**	**94**	**115**	**128**	**121**	**707**	

2 *Belaire Owner's Association* v. *DLF Limited and Ors.*, Case No. 19 of 2010.

Sector-wise distribution of Anti-Trust Matters noted under Section 3 & 4 of Competition Act[3]



The above table and chart indicates that the number of cases in real estate peaked in 2014-15 and then showed a downward movement. In the alternative, if this was dealt with as an anticompetitive practice, in terms of Section 3 of the Act, perhaps, the outcome could have been substantially different.

An opportunity presented itself before the CCI, much later, in the form of a matter known as *Shri Jyoti Swaroop Arora* v. *M/s Tulip Infratech Ltd. and Ors.*[4] It was a matter in which an Informant himself did the entire leg work and submitted information before the Commission alleging anti-competitive practices by builders/ developers. Luckily, this matter was referred for investigation to the Director General(DG). After investigation, under Section 26(1) of the Act, the DG submitted the report stating that the practices being indulged in by the opposite parties (builders and developers) were as under:

"(i) Non-disclosure of calculation of total common area and its proportionate apportionment on the apartments being sold on Super Area basis and, reserving the right to increase or decrease the flat area.

(ii) Not expressly disclosing the applicable laws, rules and regulation etc. with respect to the projects being developed.

(iii) Reserving the right of further construction on any portion of the project land or terrace or building and to take advantage of any increase in FAR/Floor Space Index (FSI) being available in the future.

(iv) Charging high interest from the apartment owners on delayed payments as against payment of significantly lower interest/ inadequate compensation on account of delay on the part of the builder in implementation of the project.

(v) Restricting the rights, title and interests of apartment allottees to the apartments being sold, and retaining the right to allot, sell or transfer any interests in the common areas and facilities as per their discretion.

(vi) Fastening the liability for defaults, violations or breaches of any laws, bye laws, rules and regulations upon the apartment owners without admitting corresponding liability on the part of builder/ developer.

(vii) Non-disclosure of all the terms and conditions of sale to the prospective buyers at the stage of booking of apartments and taking booking amount from interested buyers without disclosing the terms and conditions of the sale agreement to be executed at a later stage."

The investigation by DG concluded that, certain practices are indeed being commonly carried on by builders/ developers of residential apartment in the country. Furthermore, the above practices were being carried out by these developers and builders across the country not by chance but by way of an agreement /understanding/informal cooperation. Which lead him to conclude

3 http://www.cci.gov.in/sites/default/files/annual%20reports/annual%20report%202015-16.pdf (Annual Report of Year 2015-16)

4 Case No. 59 of 2011.

that, practices carried on by builders/ developers have cost implications for consumers, thus resultantly have an impact on or determine the final price of apartments in contraventions of Section 3(3)(a) of the Act. He further recommended that making the provision of services by builders/developers contingent upon acceptance by buyers and certain clauses incorporated in the sales agreement tend to amount to controlling the provision of services in contravention of section 3(3)(b) of the Act.

The DG report further mentioned that, CREDAI provides a platform to its Members to meet and discuss various issues related to these practices. However DG did not find any contravention of the provisions of the Act by CREDAI itself in absence of any substantive evidence against it.

At the time of the hearing before the Commission, to analyze the report of DG, the Commission called all the parties involving informant. The Informant came in person alone without being supported by any lawyer or any professional and on the other side of the battle were 24 builders as opposite parties who were none other than the well known reputed builders/developers of the NCR region represented by 71 Advocates, 7 Senior Advocates and a countless number of executives of these real estate companies. This itself shows the nature of fight.

While delivering the order in this matter, the Commission extensively discussed about the investigation having been done by the DG after the order passed under Section 26(1) of the Act. The operative part of the order of the commission is contained from Para 340 onwards.

In para 340 and 341 of the order, the Commission was of the view that CREDAI is providing a platform to different developers/builders where they can discuss their issues of common interest and reach out to a solution which can provide them with commercial gains. However it further said in its order that there is no substantive evidence presented by DG, which can lead the Commission towards any definite violation of Section 3 of the Act. These parts of the order of the Commission are being extracted below:

> *"340. It may be observed that for establishing contravention of Section 3(3) read with Section 3(1) of the Act, some evidence of practice carried on or decision taken by CREDAI which further results into price fixing, limiting and controlling provision of services etc. has to be shown. In the present case, the DG did not find any evidence which is suggestive or indicative of any role played by CREDAI in providing its platform to the members for anti-competitive practices. In such a scenario, it was incumbent upon the DG to have gathered sufficient evidence in light of the thresholds laid down in the Act. The DG, de hors the platform of CREDAI for conducting the impugned practices, did not find any material other than the agreements executed between the builders and the buyers containing the common clauses to a varying degree. Such commonality, in the absence of any evidence to establish role of CREDAI or understanding, arrangement or action in concert between the individual enterprises which are arrayed as opposite parties, cannot be held to be in contravention of the provisions of Section 3(3) read with Section 3(1) of the Act in the present case.*
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> *341. The Commission too has looked into the matter in great depth and found no evidence to corroborate that CREDAI has provided any platform, directly or indirectly to its members for indulging in any anti-competitive practice. The Commission, however, hastens to add that in certain market structures, commonality of clauses may be taken as a plus factor to corroborate the parallel conduct for the purposes of reaching a finding of contravention of the provisions of Section 3 of the Act. In the present case, there are over 9000 members of CREDAI who are operating in the sector. Besides, it is also seen that there are other*

players in this market who are not associated with CREDAI. As the DG has not produced sufficient material on record wherefrom any concert amongst the players can be gleaned, it is futile to examine the common practices to ascertain the contravention of the relevant provisions of the law."

It is not clear if it was incumbent upon DG to find some evidence and he did not do it, who would guide him. In subsequent paragraphs, the Commission further agrees that CREDAI is an association providing platform to real estate enterprises to meet and discuss the issue but there is no evidence for their wrongful conduct. It appears that the Commission didn't consider the possibility of ordering further investigation into the role played by the association and give a further direction to DG to investigate into the matter. This power is with the Commission, under Section 26(7) of the Act, and could have been used by it for dealing with market distortions as well as in the interest of consumers. For a ready reference provisions of Section 26(7) of the Act and the views of the Commission on the role of CREDAI are being extracted below:

"Procedure for inquiry under section 19:

26. (1) On receipt of a reference from the Central Government or a State Government or a statutory authority .....

(7) If, after consideration of the objections or suggestions referred to in sub-section (5), if any, the Commission is of the opinion that further investigations is called for, it may direct further investigation in the matter by the Director General or cause further inquiry to be made by in the matter or itself proceed with further inquiry in the matter in accordance with the provisions of this Act."

The part of the order dealing with the role played by CREDAI is being extracted below:

"342. Though the Informant has very strenuously highlighted the role played by CREDAI in providing a platform to its members, nothing has been shown which can reflect a conduct falling foul of the relevant provisions. As argued by the Informant, the Commission notes that CREDAI does provide a platform to real estate enterprises to meet and discuss issues of common interest and find common solutions to their problems to further the commercial interest of its members who are all builders/developers.

343. However, as noted above, the DG did not find any evidence which is suggestive or indicative of any role played by CREDAI in providing its platform to the members for anti-competitive practices."

However, after discussing the DG report, the Commission, in para 346 of its order expressed its difficulty to accede to the contention of the Informant and disagreed with the report of the DG in so far as the contraventions of the provisions of Section 3(3)(a) and (b) of the Act were concerned. The Commission did not hold the evidence brought by DG to be sufficient warranting a finding of the contravention in the matter. For a ready reference the paragraph 346 of the order of the Commission is being reproduced below:

"346. On a careful consideration of the matter, it is difficult to accede to the contention of the Informant that the same contravenes the provisions of the Act. Resultantly, with the aforesaid observations, the Commission differs with the findings of the DG on issue of contravention of the provisions of Section 3(3)(a) & (b) of the Act and holds that not sufficient evidence obtains on record which warrants a finding of contravention in this case."

Having done so, the Commission did consider it appropriate to spend some time and energy on lamenting on the woes of an apartment buyer. It was a good thing but whether sufficient only time can tell. This was as under :

"347. Having held so, the Commission deems it appropriate to highlight that the

consumers in the real estate market face various hardships. Though the Commission did not find any collusion between the parties due to the absence of evidence in the present case, the same is in no way suggestive of any intrinsic fairness of the impugned clauses. The Commission notes that non-disclosure of calculation of total common area and its proportionate apportionment on the apartments being sold on super area basis only accentuates the already existing asymmetrical relationship between the builder and the buyer. Further, by not expressly disclosing the applicable laws, rules and regulation etc. with respect to the projects being developed, the consumers are often left to fend for themselves. Similarly, fastening the liability for defaults, violations or breaches of any laws, bye laws, rules and regulations upon the apartment owners without admitting corresponding liability on the part of builder/ developer, is far from fair. Besides, the conduct of builders in non-disclosure of all the terms and conditions of sale to the prospective buyers at the stage of booking of apartments and taking the booking amount from interested buyers without disclosing the final terms and conditions of the sale agreement to be executed at a later stage, is plain exploitative.

348. The parties tried to ratiocinate their parallel conduct by passing the same of as common industry practices and to further enable the consumers to compare apples with apples through the standardization of agreements. In fact, it was canvassed by some of the parties the common industry practices are to be found across the industries and the same cannot be held to be violative of any law. Examples of common industry practices such as 'goods once sold, cannot be returned' were advanced to fortify such submissions."

In the next paragraph, the Commission notes that sometimes common standard practices are followed by the industries. However, in the eyes of the Commission, this argument can't be stretched to the point of becoming exploitative. What held the hands of the Commission to strike at these practices is not clear. Nonetheless, a sermon, for future good conduct, was given to the industry. This is reflected in the following part of the order :

"349. The Commission notes that the plea is thoroughly misconceived and misplaced. Every industry seeks to evolve common standards and terms for efficient functioning of the markets and for the benefit of all the stakeholders. Such practices, including the examples cited by the counsel for the appearing parties are usually not intrinsically frowned upon unless the same are demonstrably against the interest of one set of stakeholders and against the letter and spirit of a statutory framework.

350. It is no doubt true that the industries over a period of time may develop common practices to bring standardization in their products and services, but the arguments cannot be stretched to a level where the practices which are plainly exploitative and in contravention of the extant laws can be sustained and upheld. In fact, in a competitive market, the incumbent players would naturally strive to deviate from such standards in order to acquire the market share."

It is heartening to note that the Commission was aware of these market distortions and consumer sufferings but, perhaps, could not act because 'sufficient evidence was not found to establish an agreement spanning across the regions and players.' . Further, the relevant extract of the order is being given below:

"351. In the present case, some of the practices found by the DG as anti-competitive can in no case be said to fall in the category of industry practices which are innocuous in nature. It appears that the parties though taking such pleas have not adduced a single example where such common industry practices have helped the consumers by ameliorating their

asymmetric position. The Commission notes that instead of providing an informed and fair comparison, in the garb of 'industry practices' the players have created a situation where the consumers are left to fend for themselves. If the argument of the parties is taken to its logical conclusion, it would appear that all players are competing to provide consumers the option to compare 'one rotten apple with another rotten apple'. The race seems to reach to the bottom of the recess which cannot be countenanced and approved of, notwithstanding the lack of finding of contravention of the Act in the instant case. In view of the above, the Commission has no hesitation, in light of the material on record, to hold that the plea is only a ruse and is completely devoid of any substance. "

It is really truthful, for the Commission to further state that it has received a lot of information against the real estate players but all of them were of abuse of dominant position. Incidentally, the Commission has powers to initiate any proceedings on its own knowledge also. These provisions have also been used in the past in some cases, case of Excel Crop Care being the most prominent one on the lot. These cases did not sustain because the alleged parties were not dominant in their relevant market. The relevant admission of the Commission is being given under :

"353. It may be noticed thereform that on a preliminary consideration, it appeared difficult that such practices could be present across the broad and be carried on commonly by the real estate developers in a competitive market. The DG investigation has only strengthened the anxiety of the Commission. Though the DG investigated the representative sample to examine the impugned conduct of the players in the real estate sector, the Commission is conscious of the prevalence of such practices across the sector. The Commission has received many informations against several real estate players alleging exploitative conduct and unfair terms being imposed by the builders. However, most of these cases could not be carried further as they related to abuse of dominance by parties which were prima facie not found to be in a dominant position. Thus, it could not be gainsaid that the sector suffers from inertia generated due to lack of competitive pressure which would force the players to offer better services and fair terms."

In the subsequent paragraphs, the Commission shows concern that there is decline in self-regulatory standards and the activities of the association like CREDAI should be controlled. The part of the order is given below:

"355. The Commission also notices that in recent times the self-regulatory standards in the sector have shown a decline. The need for external regulation to supplement self-regulation is constantly felt. The role of CREDAI in this regard as the apex body for private real estate developers in India, representing over 9,000 developers through 22 states and 150 city level member associations across the country, also needs to be harnessed. It is hoped that CREDAI shall follow its stated objectives to maintain integrity and transparency in the profession of real estate development.

356. Notwithstanding the findings recorded in this order, the Commission is of the firm opinion that the issues raised by the Informant are not only pertinent but need to be addressed by the policy makers and regulators through appropriate legislative tools in tandem with the self-regulatory role played by CREDAI."

With due respect, it appears akin to the strong condemnation of killings by terrorists by the Government in power. In the subsequent paragraphs, the Commission notes that the customers and the consumers are helpless. The part dealing with this is as under :

"357. The real estate sector plays a catalytic role in fulfilling the need and demand for housing and infrastructure in the country. While this sector has grown significantly in recent years, it has remained largely unregulated, with

absence of lack of adequate consumer protection. Though the Consumer Protection Act, 1986 is available as a forum to the buyers in the real estate market, the recourse is only curative and is not adequate to address all the concerns of buyers and promoters in that sector. With these concerns in the backdrop, the legislature has acknowledged the regulatory vacuum in the real estate sector and consequent need for its regulation through the Real Estate (Regulation and Development) Bill. The proposed Bill inter alia provides for the establishment of the Real Estate Regulatory Authority for regulation and promotion of real estate sector and to ensure sale of plot, apartment or building, as the case may be, in an efficient and transparent manner and to protect the interest of consumers in real estate sector.

358. The Commission hopes and trusts that the Parliament shall take immediate and urgent steps to enact such a law which will supplement the existing regulatory architecture in addressing the grievances of the purchasers through a mix of structural and behavioral remedies."

Further, in the next paragraph, the Commission recommends the industries to take voluntarily appropriate measures for the concerns raised by the informant :

"359. In view of the totality of the facts and circumstances of the present case, the Commission in exercise and discharge of its mandate, deems it appropriate to strongly recommend that not only the parties investigated but all the players in the sector take appropriate voluntary measures to address the concerns projected in the present case."

It is a matter of happiness that now the Parliament has enacted a law to deal with such kind of practices and the RERA 2016 has come into force from May 01. 2017 all over the country.

It could be said by some that these issues could also have been dealt by the over arching regulators i.e. CCI even before the enactment of RERA, 2016. Be that it may, now we can hope that the new legislation will help bring in succour for the millions and millions of the helpless consumers suffering endlessly at the hands of builders and developers.

It is heartening to note that the regulatory authorities to regulate real estate sector either have come or are coming up across the country in different states. The status across the country, on this front, is as under[5].

S. No.	State	Established	Authority	Rules
1	Uttarakhand	28th April, 2017	Authority & Appellate Tribunal	Uttarakhand Real Estate (Regulation and Development) (General) Rules, 2017
2	Delhi	24th November, 2016	Authority &Appellate Tribunal	National Capital Territory of Delhi Real Estate (Regulation and Development) (General) Rules, 2016.
3	UP	27th October, 2016	Authority &Appellate Tribunal	The Uttar Pradesh Real Estate (Regulation and Development) Rules, 2016
4	Rajasthan		Authority & Appellate Tribunal	Rajasthan Real Estate (Regulation and Development) Rules, 2017
5	West Bengal	18th August 2016	Authority & Appellate Tribunal	West Bengal Real Estate (Regulation and Development) Rules, 2016
6	Gujarat	4th May, 2017	Authority & Appellate Tribunal	Gujarat Real Estate (Regulation and Development) (General) Rules, 2017
7	Maharastra	20th April, 2017	Authority & Appellate Tribunal	Maharashtra Real Estate (Regulation and Development)(Registration of real estate projects, Registration of real estate agents, rates of interest and disclosures on website) Rules, 2017.

5 http://www.merarera.com/merarera/

8	Karnataka	10th July 2017	Authority & Appellate Tribunal	Karnataka Real Estate (Regulation and Development) Rules, 2016
9	Kerala	3rd February, 2016	Authority & Appellate Tribunal	Real Estate (Regulation and Development) Act, 2015 (5 of 2016)
10	Andaman and Nicobar	31st October, 2016	Authority & Appellate Tribunal	Andaman and Nicobar Islands Real Estate Regulation and Development) (Agreement for Sale) Rules, 2016
11	Lakshwadeep	31st October, 2016	Authority & Appellate Tribunal	Lakshadweep Real Estate (Regulation and Development) (General) Rules, 2016
12	Chandigarh			
13	Pondicherry	24th November, 2016	Authority & Appellate Tribunal	National Capital Territory of Delhi Real Estate (Regulation and Development) (General) Rules, 2016
14	Dadra and Nagar Haveli	31st October, 2016	Authority & Appellate Tribunal	Dadra and Nagar Haveli Real Estate (Regulation and Development) (General) Rules, 2016
15	Daman and Diu	31st October, 2016	Authority & Appellate Tribunal	Daman and Diu Real Estate (Regulation and Development) (General) Rules, 2016.

In most of these bodies the Governments have appointed the Chairperson and full time Members. Unless these bodies start shying away from the mandate given to them and forget the high hopes on which they are riding, in the coming years, India can certainly hope for less number of people who are exploited without any redressal avenues in this sector.

If successfully enforced this regulation is likely to give a further genuine boost to the growth of this sector free from the shackles of the speculators, middleman and opportunistic investors and bring the dreams of owning a roof which they can call their own within closer grasp of a large segments of the populace and thus fulfill the dreams of the Prime Minister to give homes to all.