

Unfair Trade Practices by Builders in India in the Era of Competition[#]

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The importance of the construction industry in every economy cannot be belittled. Its pivotal role in developing economies is further recognised. The industry's significance lies in the fact that almost every other sector depends on the infrastructure and buildings that it constructs. However, authorities across the globe question the practices this industry is accused of and are exercising all attempts to curb the notoriety that the industry has acquired. The situation in India is no different with the plethora of suits filed by the distraught against builders in consumer forums and the allegations of cartelisation by builders brought before the Competition Commission of India. This article attempts to deal with the unfair trade practices that builders in India are accused of, the allegations of cartelisation and the protection awarded to the distraught under Indian legislation.

Much has been said about the global construction industry and their practices. The Organisation for Economic Co-operation and Development's (OECD) Competition Commission in a round table conference debated issues relating to the construction industry¹ in member countries as they relate to competition law and policy² (OECD Competition Report on the Construction Industry). This round table conference stressed on the importance of the industry and analysed the unfair and anti-competitive practices seen in this

industry across member countries. The predicament faced by the persons who deal with members of the Indian construction industry was also noticed by the Supreme Court of India in *Friends Colony Development Committee v. State of Orissa*³ while dealing with town planning laws when it stated as follows:

Builders violate with impunity the sanctioned building plans and indulge deviations much to the prejudice of the planned development of the city and at the peril of the occupants of the premises constructed

This article is based on the position of law in India on the subject matter as on 12th September, 2010

1 References to the "construction industry" in this article are limited to builders involved in residential and commercial development.

2 OECD Publication on the Construction Industry dated December 2008 available at <http://www.oecd.org/dataoecd/32/55/41765075.pdf>. Last visited on 12th September, 2010

3 MANU/SC/0933/2004: (2004)8 SCC 733

Rise in real estate prices withstanding all economic crisis has made "affordable housing" a distant reality

or of the inhabitants of the city at large. Serious threat is posed to ecology and environment and, at the same time, the infrastructure consisting of water supply, sewerage and traffic movement facilities suffer unbearable burden and are often thrown out of gear. Unwary purchasers in search of roof over their heads and purchasing flats/apartments from builders find themselves having fallen prey and become victims to the design of unscrupulous builders. The builder conveniently walks away having pocketed the money leaving behind the unfortunate occupants to face the music in the event of unauthorised constructions being detected or exposed and threatened with demolition.

With the Indian economy's increasing dependence on this industry in the wake of an economic boom, it is clear that this select industry has acquired in India a "you cannot do without them, you cannot do with them" status in the minds of most. The rise in real estate prices withstanding all economic crisis has made "affordable housing" a distant reality. These unearthly prices coupled with delays and inefficiency in delivering the finished product has caused distress among many a consumer and has raised the eyebrow of the authorities.⁴

Could this be a product of unequal bargaining power and anti-competitive behaviour or is this the product of a capitalist society where a few rich industrialists set the benchmark much to the peril of the others. What needs to be understood is the justification behind the increasing prices of property today, the unfairness of the practices employed by builders, the resilience of the industry to continue employing the practices followed despite the constant berating from the judiciary. With the advent of the new Competition Act, 2002, is the consumer watch dog empowered sufficiently with the ability to address the concerns of the distraught?

Changes in the Indian Legal Regime

Consumer welfare legislation like the Consumer Protection Act (CPA), 1986, the erstwhile Monopolies and Restrictive Trade Practices Act (MRTP Act), 1999 sought to empower the consumer to take necessary action against unfair trade practices employed by traders and service providers. However, realising the need to give further effect to the fundamental rights enshrined in the Constitution of India⁵ and to promote a free market economy, the Government decided to shift focus from curbing monopolies to promoting competition.⁶ This led to the constitution of a High Level Committee on Competition Policy and Law in October 1999 also known as the "Raghavan Committee". The Raghavan Committee in its report *inter alia* submitted to the Government in May 2000 emphasised the need for an effective competition policy for the country which would be the centre of sustained economic development. The committee also stressed on the

4. See article in the Business Standard, 11th September, 2010 titled "CCI order soon on DLF projects" available at <http://www.business-standard.com/india/news/cci-order-soondlf-projects/407785/>. Last visited on 12th September, 2010

5. Articles 14, 19 and 21 of the Constitution of India

6. Hon'ble Finance Minister of India in his Budget Speech on 27th February, 1999

limited sweep of the MRTP Act and its failure to effectively promote competition. After much parliamentary debate, the Competition Act, 2002 (Competition Act) was enacted on the basis on the Raghavan Committee repealing the MRTP Act. This act imports into its purview concepts of competition law followed by more developed nations like the United States of America and the European Union. Although the Competition Act does not define "unfair trade practices" *per se*, it seeks to (i) prohibit anti-competitive agreements, (ii) prohibit abuse of dominance and (iii) regulate combinations,⁷ all by-products of unfair trade practices that curb competition and a free market. The Competition Act vests in the Competition Commission of India (CCI), being the regulatory entity constituted under the

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7 Sections 3, 4 and 5 of the Competition Act

8 Orders by Commission after inquiry into agreements or abuse of dominant position (Section 27 of the Competition Act)

Whereafter, inquiry the Commission finds that any agreement referred to in Section 3 or action of an enterprise in a dominant position, is in contravention of Section 3 or Section 4, as the case may be, it may pass all or any of the following orders, namely:

- (a) direct any enterprise or association of enterprises or person or association of persons, as the case may be, involved in such agreement, or abuse of dominant position, to discontinue and not to re-enter such agreement or discontinue such abuse of dominant position, as the case may be;
- (b) impose such penalty, as it may deem fit which shall be not more than 10 per cent. of the average of the turnover for the last three preceding financial years, upon each of such person or enterprises which are parties to such agreements or abuse:

Provided that in case any agreement referred to in Section 3 has been entered into by a cartel, the Commission may impose upon each producer, seller, distributor, trader or service provider included in that cartel, a penalty of up to three times of its profit for each year of the continuance of such agreement or 10 per cent of its turnover for each year of the continuance of such agreement, whichever is higher.
- (c) [Omitted by Competition (Amendment) Act, 2007]
- (d) direct that the agreements shall stand modified to the extent and in the manner as may be specified in the order by the Commission;
- (e) direct the enterprises concerned to abide by such other orders as the Commission may pass and comply with the directions, including payment of costs, if any;
- (f) [Omitted by Competition (Amendment) Act, 2007]
- (g) Pass such other [order or issue such directions] as it may deem fit.

Provided that while passing orders under this Section, if the Commission comes to a finding, that an enterprise in contravention to Section 3 or Section 4 of the Act is a member of a group as defined in clause (b) of the Explanation to Section 5 of the Act, and other members of such a group are also responsible for, or have contributed to, such a contravention, then it may pass orders, under this Section, against such members of the group.

Unfair Trade Practices by Builders

The definition of "unfair trade practices" originally found mention in Section 36A of the MRTP Act to mean a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provisions of any services, adopts any unfair method or unfair or deceptive

practice. Section 36A further enumerates types of unfair trade practices that would fall within the scope of the definition. This list is inclusive and not exhaustive. Pursuant to an amendment, the CPA was amended to include the definition of unfair trade practice⁹ as given under Section 36A of MRTP Act with a view to

9 Section 2(r) of the CPA defines unfair trade practice to mean "unfair trade practice" means a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopts any unfair method or unfair or deceptive practice including any of the following practices, namely:

- (1) the practice of making any statement, whether orally or in writing or by visible representation which:
 - (i) falsely represents that the goods are of a particular standard, quality, quantity, grade, composition, style or model;
 - (ii) falsely represents that the services are of a particular standard, quality or grade;
 - (iii) falsely represents any re-built, second-hand, renovated, reconditioned or old goods as new goods;
 - (iv) represents that the goods or services have sponsorship, approval, performance, characteristics, accessories, uses or benefits which such goods or services do not have;
 - (v) represents that the seller or the supplier has a sponsorship or approval or affiliation which such seller or supplier does not have;
 - (vi) makes a false or misleading representation concerning the need for, or the usefulness of, any goods or services;
 - (vii) gives to the public any warranty or guarantee of the performance, efficacy or length of life of a product or of any goods that is not based on an adequate or proper test thereof;

Provided that where a defence is raised to the effect that such warranty or guarantee is based on adequate or proper test, the burden of proof of such defence shall lie on the person raising such defence;
 - (viii) makes to the public a representation in a form that purports to be:
 - (i) a warranty or guarantee of a product or of any goods or services; or
 - (ii) a promise to replace, maintain or repair an article or any part thereof or to repeat or continue a service until it has achieved a specified result, if such purported warranty or guarantee or promise is materially misleading or if there is no reasonable prospect that such warranty, guarantee or promise will be carried out;
 - (ix) materially misleads the public concerning the price at which a product or like products or goods or services, have been or are, ordinarily sold or provided, and, for this purpose, a representation as to price shall be deemed to refer to the price at which the product or goods or services has or have been sold by sellers or provided by suppliers generally in the relevant market unless it is clearly specified to be the price at which the product has been sold or services have been provided by the person by whom or on whose behalf the representation is made;
 - (x) gives false or misleading facts disparaging the goods, services or trade of another person.

Explanation.— For the purposes of Clause (1), a statement that is:

 - (a) expressed on an article offered or displayed for sale, or on its wrapper or container; or
 - (b) expressed on anything attached to, inserted in, or accompanying, an article offered or displayed for sale, or on anything on which the article is mounted for display or sale; or

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making CPA a self-contained code. This overlap in jurisdiction was discussed by the Raghavan Committee Report when recommending the repeal of the MRTP Act.¹⁰ Numerous decisions have been rendered by many judicial authorities in favour of consumers affected by acts of builders falling within the ambit of "unfair trade practices" as defined under the MRTP Act and the CPA. A few such cases are discussed below:

False representation

In *Bhim Sen v. Delhi Development Authority*,¹¹ the MRTP Commission held that the respondent by misrepresenting to the complainant that a flat would be allotted to him and not allotting him the same was guilty of unfair trade practices by way of false representation.

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- (c) contained in or on anything that is sold, sent, delivered, transmitted or in any other manner whatsoever made available to a member of the public, shall be deemed to be a statement made to the public by, and only by, the person who had caused the statement to be so expressed, made or contained;
- (2) permits the publication of any advertisement whether in any newspaper or otherwise, for the sale or supply at a bargain price, of goods or services that are not intended to be offered for sale or supply at the bargain price, or for a period that is, and in quantities that are, reasonable, having regard to the nature of the market in which the business is carried on, the nature and size of business, and the nature of the advertisement.
- Explanation.*—For the purpose of Clause (2), "bargaining price" means:
- (a) a price that is stated in any advertisement to be a bargain price, by reference to an ordinary price or otherwise, or
- (b) a price that a person who reads, hears or sees the advertisement, would reasonably understand to be a bargain price having regard to the prices at which the product advertised or like products are ordinarily sold;
- (3) permits:
- (a) the offering of gifts, prizes or other items with the intention of not providing them as offered or creating impression that something is being given or offered free of charge when it is fully or partly covered by the amount charged in the transaction as a whole;
- (b) the conduct of any contest, lottery, game of chance or skill, for the purpose of promoting, directly or indirectly, the sale, use or supply of any product or any business interest;
- (3A) withholding from the participants of any scheme offering gifts, prizes or other items free of charge, on its closure the information about final results of the scheme.
- Explanation.*—For the purposes of this sub-clause, the participants of a scheme shall be deemed to have been informed of the final results of the scheme where such results are within a reasonable time, published, prominently in the same newspapers in which the scheme was originally advertised;
- (4) permits the sale or supply of goods intended to be used, or are of a kind likely to be used, by consumers, knowing or having reason to believe that the goods do not comply with the standards prescribed by competent authority relating to performance, composition, contents, design, constructions, finishing or packaging as are necessary to prevent or reduce the risk of injury to the person using the goods;
- (5) permits the hoarding or destruction of goods, or refuses to sell the goods or to make them available for sale or to provide any service, if such hoarding or destruction or refusal raises or tends to raise or is intended to raise, the cost of those or other similar goods or services.
- (6) manufacture of spurious goods or offering such goods for sale or adopts deceptive practices in the provision of services.

¹⁰ See Chapter VII of the Report of the High Level Committee on Competition (Raghavan Committee Report)

¹¹ MANU/MR/0012/2003: [(2003) CPJ 124 (MRTP)]

Misleading advertisement

Advertisement inviting applications for allotment without having title to the impugned sites was held to be a deceptive and unfair trade practice by the Supreme Court in *DLF Universal Ltd. and Anr. v. The Director General (Investigation and Registration) and Anr.*¹²

Bargain sale

The Supreme Court in *DLF Universal Ltd. v. Ekta Seth and Anr.*¹³ found that a clause containing an escalation cost in an apartment buyer's agreement without disclosing the maximum enhancement amounted to vesting of unrestricted power to increase the cost of a flat and hence is an unfair trade practice.

Sub-standard work

The Supreme Court in *Faqir Chand Gulati v. Uppal Agencies Pvt. Ltd. and Anr.*¹⁴ stated that if a builder of a house uses sub-standard material in construction of a building or makes false or misleading representations about the condition of the house then it is denial of the facility or benefit of which a consumer is entitled to claim value under the CPA. The Supreme Court in the same case held that a consumer has the right to approach the Civil Court or the Forum under CPA, for relief in a

situation where the builder commits breach of his obligations.

Delay in delivery of possession, poor quality material used,¹⁵ misrepresentations, fraudulent real estate scams¹⁶ still appear to surface despite the consumer legislation and the judicial system's constant berating against the unfair trade practices employed by builders. Without prejudice to the recourses of the distraught under applicable land laws¹⁷ and tort and contract law, which are the subject of civil suits to be brought before Civil Courts and not special forums constituted to dole out speedy justice, with the repeal of the MRTP Act, a consumer affected by unfair trade practices employed by builders may now have to seek recourse under the CPA. Since the CPA is a consumer welfare legislation granting recourse only to consumers, consumer associations, the Central and State Governments, with no power granted to the Forums constituted thereunder to *suo moto* inquire into such unfair practices, it is questionable as to whether the reach of the authorities to prevent such measures is now considerably constrained. Further, since trade associations do not fall within the definition of "complainant" as defined under the CPA,¹⁸ recourse against unfair

12 MANU/SC/2648/2008: AIR 2008 SC 2244

13 MANU/SC/7830/2008: (2008)7SCC585

14 MANU/SC/3133/2008: (2008) 10 SCC 345

15 See article in the Times of India, Lucknow edition 28th December, 2009 titled "Residents accuse builder of poor quality construction" at <http://timesofindia.indiatimes.com/city/lucknow/Residents-accuse-builder-of-poor-quality-construction/articleshow/5385969.cms> Last visited on 12th September, 2010

16 See article in the Times of India, Jaipur edition 24th May, 2009 titled "Rs 80 crore real estate fraud in city" at <http://timesofindia.indiatimes.com/city/jaipur/Rs-80-cr-real-estate-fraud-in-city/articleshow/4570619.cms> . Last visited on 12th September, 2010

17 The subject-matter of property is subject to state specific laws. In the state of Maharashtra, for example, development of land is subject to a plethora of legislation like Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963, Maharashtra Regional Town Planning Act, 1966 which require developers to comply with certain obligations.

18 Section 2(b) of the CPA defines complainant to mean (i) a consumer; or (ii) any voluntary consumer association registered under the Companies Act, 1956 (1 of 1956) or under any other law for the time being in force; or (iii) the Central Government or any State Government, (iv) one or more consumers, where there are numerous consumers having the same interest; (v) in case of death of a consumer, his legal heir or representative; who or which makes a complaint.

trade practices for this sub sect of individuals may be further restricted. It may be noted that the recourse under applicable land laws in the subject Prior to the Competition Act coming into force the Madras High Court in *Colgate-Palmolive (India) Limited v. Anchor Health and Beauty Care Private Ltd.*¹⁹ made mention of this fact when it stated as follows:

However, The MRTP Act, 1969 is sought to be repealed by Section 66 of The Competition Act, 2002 (Section 66 does not appear to have been notified so far). But fortunately, the power to enquire into complaints of unfair trade practices is also vested with the Consumer Forum, in view of the fact that the provisions of Section 36A of MRTP Act, 1969 (extracted above) stands imported verbatim into the Consumer Protection Act, 1986 by the Amendment Act 50 of 1993. The definition of "unfair trade practice" found in Section 36A(1) of the MRTP Act, 1969, is adopted in *pari materia* in Section 2(1)(r) of the Consumer Protection Act, 1986. But once

Section 66 of The Competition Act, 2002 is notified and the MRTP Commission is dissolved, a manufacturer or a stockist or a dealer, cannot invoke the provisions of the MRTP Act. But he may be able to approach the Competition Commission. However, he cannot invoke the provisions of the Consumer Protection Act, since that Act is intended only for the benefit of consumers and not for the benefit of manufacturers, marketers or service providers. But he may have a common law remedy to approach the civil court subject however to other constraints.

(Emphasis supplied)

The Competition Act seeks to prohibit anti-competitive agreements and abuse of dominance and to control combinations²⁰ which are fall outs of unfair trade practices and not unfair trade practices per se as currently understood under the MRTP Act regime. However, it is subject to interpretation as to whether the ambit of the provisions of Section 4²¹ of the Competition Act which

19 MANU/TN/0980/2008: 2009(40) PTC 653 (Mad)

20 Section 3, 4 and 5 of the Competition Act, 2002, respectively

21 Section 4 of the Competition Act.

- (1) No enterprise or group shall abuse its dominant position.
- (2) There shall be an abuse of dominant position [under Sub-section (1), if an enterprise or a group.
 - (a) directly or indirectly, imposes unfair or discriminatory:
 - (i) condition in purchase or sale of goods or service; or
 - (ii) price in purchase or sale (including predatory price) of goods or service.

Explanation.—For the purposes of this clause, the unfair or discriminatory condition in purchase or sale of goods or service referred to in Sub-clause (i) and unfair or discriminatory price in purchase or sale of goods (including predatory price) or service referred to in Sub-clause (ii) shall not include such discriminatory condition or price which may be adopted to meet the competition; or
 - (b) limits or restricts:
 - (i) production of goods or provision of services or market therefore; or
 - (ii) technical or scientific development relating to goods or services to the prejudice of consumers; or
 - (c) indulges in practice or practices resulting in denial of market access in any manner; or

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prohibits abuse of dominance can be extended to control unfair trade practices. Section 4(2) prohibits an entity in a dominant position from directly or indirectly imposing unfair or discriminatory conditions in purchase and price in purchase of goods and services. There are no objective criteria to determine dominance. The term "dominant position" defined in the Competition Act²² is a subjective definition and is based on the analysis of this term set out in Raghavan Committee Report.²³ This definition does not allocate a fixed percentage of market share for the determination of dominance. Although certain factors²⁴ such as size and resources of enterprise, size and importance of competitors, market share economic power of the enterprise, vertical integration of enterprises, sale and services networks of enterprises, entry barriers, countervailing buying powers, market structure etc. would have to be given due

regard by the CCI in determining "dominant position" of enterprise in the relevant market, it is important to note that each of these factors are independent of the other and the CCI is granted the discretion to take regard any or all of the aforementioned factors whilst determining dominance. The OECD Competition Report on the Construction Industry commented on how though this industry appears to be overwhelmingly made up of small firms, the importance of a small number of large construction firms should not be underestimated. The report further analyses that competition among large firms is considered to be a mould of oligopoly. Although India is not a member country of the OECD, the situation concerning India's construction industry appears to be not so different. Since the definition of "dominant position" is a subjective one, many a builder may fall within its ambit and consequently, the restraint on the carrying on of unfair trade practices by

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- (d) makes conclusion of contracts subject to acceptance by other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts; or
- (e) uses its dominant position in one relevant market to enter into, or protect, other relevant market.

Explanation.—For the purposes of this Section, the expression:

- (a) "dominant position" means a position of strength, enjoyed by an enterprise, in the relevant market, in India, which enables it to:
 - (i) operate independently of competitive forces prevailing in the relevant market; or
 - (ii) affect its competitors or consumers or the relevant market in its favour.
- (b) "predatory price" means the sale of goods or provision of services, at a price which is below the cost, as may be determined by regulations, of production of the goods or provision of services, with a view to reduce competition or eliminate the competitors.
- (c) "group" shall have the same meaning as assigned to it in Clause (b) of the Explanation to Section 5

22 Explanation to Section 4 of the Competition Act defines dominant position to mean a position of strength, enjoyed by an enterprise, in the relevant market, in India, which enables it to—(i) operate independently of competitive forces prevailing in the relevant market; or (ii) affect its competitors or consumers or the relevant market in its favour.

23 See Paragraphs 4.4-5 to 4.4-8 of the Report of the High Level Committee on Competition (Raghavan Committee Report)

24 Section 19(4) of the Competition Act

builders may be checked under the new regime of the Competition Act. Further, persons other than consumers may also seek to have effective remedy against unfair practices engaged by builders. The provisions of the Competition Act are drafted to have a deterrent effect. Punitive measures taken against builders that fall within the ambit of Section 4 will in turn have a rippling effect on the industry as a whole promoting fair competition and a freer market.

Cartelisation

An essential element of the Competition Act is the prohibition of cartels that *inter alia* control pricing, limit or control production and supply, control market share and engage in bid rigging. Such associations are deemed to be adverse to competition. Some industries, more than others, are prone to cartelisation because of the characteristics of that industry. The OECD Competition Report on the Construction Industry contends that the construction industry may be one such industry. Facts like the cyclical nature of the industry, the large consumer base, the requirement of sub-contracting all make the industry susceptible to collusion. The builders in India are alleged to have formed cartels²⁵ which in turn affect prices of real estate today.

Shortage of adequate housing has led to the enactments of varied legislations in an effort to address this problem. The State of Maharashtra, for example, brought into force under the Maharashtra Regional and Town Planning Act, 1966 and the Development Control Regulations the Transferable Development Rights (TDR) policy which enables compensation to be given in the form of TDRs in return for the surrender

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of land to the State earmarked under development plans for public purposes. The holder of the TDR would be entitled to utilise on other properties the development potential of the land under reservation. The rights are transferable for consideration. What was proposed to be a welfare legislation to give developers the ability to construct the much needed housing and at the same time balance the quality of life in commercially exhausted areas has led to the concentration of the prized TDRs in the hands of a few developers thereby resulting in cartelisation and consequently the ability to control price. In the recent decision of the Bombay High Court in *Amit Maru and Arun Nathuram Gaikwad v. State of Maharashtra through the Secretary, Urban Development Department and The Commissioner, Municipal Corporation of Greater Mumbai*,²⁶ the State Government contended that "it had reason to believe that the transferable Development Rights in Mumbai are

25 See article in Times of India, Mumbai edition 3rd March, 2010 titled "Builder cartel jacks up prices in Mumbai" available at <http://www.business-standard.com/india/news/builder-cartel-jacksprices-in-mumbai/387339/>. Last visited on 12th September, 2010

26 MANU/MH/0531/2010: 2010 (112) BomLR 2501

concentrated in a few hands. Such persons have virtually formed a cartel as a result of which the prices of TDR have sky-rocketed to astronomical proportions" (para 15). The protection of the Competition Act must be invoked to curb such practices; however, despite the legal teeth granted to the CCI to inquire into anti-competitive practices like cartelisation,²⁷ it is a global fact that proving the existence of cartel is an intricate task. Even during the MRTP Act regime, proving allegations of cartelisation became difficult and cases dismissed on account of lack of evidence.²⁸ The OECD in a paper titled "Prosecuting Cartels without Direct Evidence of Agreement"²⁹ stated as follows, "Cartels are agreements among competitors fixing prices, allocating markets or rigging tenders (bids). They are the most harmful of all types of competition law violations and should be sanctioned severely. Cartel cases are unique. The most important part of a cartel case is simply proving that such an agreement existed. But getting direct evidence of a cartel agreement can be difficult. Cartel operators work in secret and often do not co-operate with investigators. In these circumstances, circumstantial evidence can play an important role in proving the agreement."

Conclusion

In the era of an economic boom, the cry for commercial and residential

development in India has never been louder. Practices employed by the construction industry are constantly questioned and are the subject of a plethora of litigation. Unfair trade practices seem to be an unstoppable evil. It is worth; however, pondering as to whether these practices, especially those concerning price, are a natural fall out of society itself. The inelastic demand for property in prime localities and cities to the exclusion of others, the economic disparity of our country which shows in the readiness of a few to throw in the extra pound at the drop of a hat, the inadequacy of effective legislative control where States seek to regularise past illegalities on account of the State's inability to provide its citizens the fundamental right to a decent living³⁰ may all be contributions to these practices. Without prejudice to the aforesaid, the builder community has exhibited behaviour that leads one to question its ethical values and its consideration for the law and society. In a case where builders were alleged to have violated with impunity sanctioned building plans, and the rules relating to Floor Space Index, fire safety and parking facilities to the prejudice of the planned development of the city, the High Court of Chennai³¹ echoing similar sentiments of the Apex Court³² stated as follows:

Such wayward growth in illegal constructions has posed a serious threat to ecology and environment and affected water supply, sewerage and

27 Sections 3(3) and 19 of the Competition Act

28 *Union of India v. Hindustan Development Corporation*, MANU/SC/0219/1994: AIR 1994 SC 988

29 OECD Policy Brief, December 2007 available at <http://www.oecd.org/dataoecd/11/30/38704302.pdf>. Last visited on 12th September, 2010

30 *Janhit Manch and Bhagvanji Raiyani v. The State of Maharashtra through its Principal Secretary Urban Development Department and Ors.* MANU/MH/0867/2006: 2007(1) BomCR 329, Para 54

31 *Consumer Action Group rep. by its Trustee Tara Murali v. The State of Tamil Nadu rep. by its Secretary to Government, Law Department* MANU/TN/7920/2006: 2006(4)CTC483

32 *Pratibha Co-Operative Housing Society Ltd. v. State of Maharashtra* MANU/SC/0335/1991: [1991] 2 SCR 745

traffic movement facilities in the city. The violations of regulatory rules on such massive scale can result in development plan becoming merely a scrap of paper. On the one hand, various laws are enacted, master plans are prepared by expert planners, provision is made in the regulations also to tackle the problem of unauthorised constructions and misusers, and on the other hand, such illegal activities go on unabated openly under the gaze of everyone, without having respect for the law and other citizens.

The need for self-regulation among the members of this industry is evident. With the advent of the new competition law in India and the awareness of the consumer, it remains to be seen how effectively the provisions of this new regime can be used to curb such practices that have adverse effects on consumers.

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