



सत्यमेव जयते



Fair Competition
for Greater Good

COMPETITION COMMISSION OF INDIA

Case No. 01 of 2014

In Re:

Mr. Ashutosh Bhardwaj

Informant

and

M/s. DLF Limited

M/s. DLF Home Developers Limited (DHDL)

M/s. DLF New Gurgaon Homes Developers Pvt. Limited

Opposite Parties

CORAM

Dr. Geeta Gouri
Member

Mr. Anurag Goel
Member

Mr. M. L. Tayal
Member

Mr. S. L. Bunker
Member

Present: Informant through M/s K.K Sharma Law Offices.



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Order under Section 26(1) of the Competition Act, 2002

1. The instant information was filed by Shri Ashutosh Bhardwaj (hereinafter referred to as “Informant”) u/s 19(1)(a) of the Competition Act, 2002 ((hereinafter referred to as ‘the Act’) against DLF Limited (‘OP-1’), DLF Home Developers Limited (‘OP- 2’) and DLF New Gurgaon Homes Developers Pvt. Ltd (‘OP-3’) (hereinafter collectively referred to as ‘the opposite parties’/OPs) alleging abuse of dominant position by OPs by imposing unfair/discriminatory conditions/prices in dealing with allottees in contravention of the provisions of section 4 of the Act.
2. Informant is an individual working as General Manager-Chief, Corporate Exploration Centre ONGC Group for Oil and Natural Gas Corporation Ltd, having a permanent address at House No. 133/1, Inder Vihar, Street No. 11, Rajender Nagar, Dehradun, Uttarakhand- 248001. The OP-1 is a public limited company having a Corporate Identification Number as <L7010HR1963PLC002484> and having its Regd. Office at DLF Limited, Shopping Mall, Third Floor, Arjun Marg, Phase-I, DLF City, Gurgaon- 122002. The primary business of the OP-1 is the development of residential, commercial and retail properties. As per Annual Report (FY-2012-13) of OP- 1, OP- 2 is a 100% subsidiary of OP- 1 as on 31st March, 2013 having its Regd. Office at DLF Centre, Sansad Marg, New Delhi, 110001. The OP-3 is a Private Limited Company and has its Regd. Office at 1-E, Jhandewalan Extension, New Delhi-110055. As per Annual Report (FY 2012-13) of OP- 1, OP-1 holds 94.02% stake in OP- 3 as on 31st March, 2013.
3. As per the information, the OP- 2 and OP-3 - under the parentage of OP- 1, launched a residential accommodation scheme by the name of ‘New Town Heights, DLF New Gurgaon’ in February, 2008. The informant booked an apartment “GAJ001” located on Ground floor in Tower/



Building no. J in New Town Heights, Sector-86, Gurgaon, a project of OPs and a non-negotiable apartment buyers' agreement(hereinafter the "Agreement") was entered between Informant, OP-2 and OP-3 on 22nd December, 2009, upon such non-negotiable terms and conditions as set in the Agreement by the OP-2 and OP-3.

4. The Informant alleged that the practices followed by the OPs as Group were abusive of its dominant position as it had imposed highly arbitrary, unfair and unreasonable conditions on the Apartment Allottees through Apartment Buyer's Agreement and their conduct. While citing various clauses of the agreement (which are too numerous to be reproduced all here), the informant further alleged that the terms of the Agreement are heavily loaded/tilted in favour of the OPs.
5. Few instances of alleged violation of Section 4(2)(a)(i) of the Act as alleged by the Informant are "the instruction in the agreement that the agreement is non-negotiable and is to be executed by allottee in its original form and that if the intending allottee makes corrections/cancellations/alterations/modifications to the same, the opposite parties shall not execute the agreement", "the cost of electricity connection and electricity charges are not included in the total price of the said apartments as per 'Definitions' section. However, non-payment of the said charges is treated as unpaid sale price of the said apartment payable by the allottee and the conveyance deed for the apartment shall be withheld by OP-2 till full payment of the same is made to OP-2. Additionally, the allottee has to mandatorily give an undertaking that, in case the Maintenance Agency undertakes to receive and distribute bulk supply of electricity in the complex, allottee shall not apply to DHBVN or any other such body for individual/direct supply of electricity to the allottee" and "process of arbitration by reserving the right to appoint sole arbitrator whose decision shall be final and binding on the parties" etc.



6. The informant, inter alia, alleged that OPs have violated the provision of Section 4(2)(d) of the Act by enforcing upon the allottees clauses 1.9 and 19 in the agreement. The clause 1.9 makes it mandatory for the allottee to pay for club facility including membership fee, annual club charges and security deposits. The said charges are further subject to revision at the sole discretion of the OPs or the agency managing the club with no option with the allottees but to abide by the same. The Informant has thus alleged that by making the sale of residential apartments contingent on the provision of apartment maintenance and club services by purchasers, the opposite parties are leveraging its dominance in the relevant market of sale and purchase of residential apartments in Gurgaon to foreclose the separate market of maintenance and club services for residential apartments. As per clause 19 of the agreement, the opposite parties seek to unilaterally impose the maintenance service of the apartment by the Maintenance Agency of its discretion upon the allottees. The informant contends that an individual buyer has absolutely no discretion to refuse to avail the services of apartment maintenance by the Maintenance Agency of OPs choice. It is argued that when the allottees make an application to opposite parties to purchase an apartment, they may or may not be willing to take services such as recreational club facility and its membership, etc. However, the opposite parties do not give any option to the allottees to exercise their choice.

7. The Commission has carefully considered the information and relevant material on record. Here, it is noted that the Commission has earlier received cases related to the project New Town Heights, self-contained township developed by Opposite Parties in Sector 90 in Gurgaon, bearing case nos. 13/2010, 21/ 2010 and 55/2012. In the said cases the Opposite Party group has been found *prima facie* dominant in the relevant market of “the provision of services for development of residential apartments in the geographical area of Gurgaon”.



8. Here, it is noted that 3 projects in the name of ‘New Town Heights’ are being developed by the Opposite Party group in Sectors 86, 90 & 91 in Gurgaon. While the earlier 3 cases were with respect to project in Sector-90, the present one is with respect to the project in Sector-86. Considering the facts of the case, the relevant market in the present case, *prima facie*, appears to be same as determined in earlier 3 cases i.e. “the market of provision of services for development of residential apartments in the geographical area of Gurgaon.”
9. The Informant has enclosed a copy of the Agreement with this information and on perusal of the same, it is found that clauses of the agreement are identical to the clauses of Agreements entered into by the OP-1 and the informants in various cases involving the Opposite Party group which, after finding a *prima facie* case, are pending at various stages in the Commission. Therefore, a *prima facie* case of violation of Section 4 of the Act is made out in the present matter also. As such, the Commission is *prima facie* of the view that the present case requires to be investigated into by the DG. Resultantly, the Commission orders under section 26(1) of the Act to the DG to cause a detailed investigation in the matter and to submit a report within a period of 60 days from the receipt of this order.
10. The DG is further directed to investigate the role of the persons, who were in charge of, and had been responsible for the conduct of the business of such companies, after giving due opportunities of hearing to such persons.
11. Nothing stated in this order shall tantamount to a final expression of opinion by the Commission on merits of the case and the DG shall conduct the investigation without being influenced by the observations made herein.



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12. The Secretary is directed to send a copy of this order, the information and other material, if any, available on record to the Office of the DG in terms of the provisions of the Act and the regulations framed there under.

**Sd/-
Dr. Geeta Gouri
Member**

**Sd/-
Mr. Anurag Goel
Member**

**Sd/-
Mr. M. L. Tayal
Member**

**Sd/-
Mr. S. L. Bunker
Member**

New Delhi

Date: 27.02.2014