



COMPETITION COMMISSION OF INDIA

(Case No. 06 of 2013)

Dated: 11-06-2013

In Re:

Dr. Adla Satya Narayan Rao

Informant

And

Delhi Development Authority

Opposite Party

CORAM:

Ashok Chawla
Chairperson

Anurag Goel
Member

M.L.Tayal
Member

Justice (Retd.) S.N. Dhingra
Member

S.L. Bunker
Member

Present: Shri. Avi Singh and Sh. Dhruv Malik, Advocates for the informant.

Ms. Girija Wadhwa, Advocate and Sh. A.K.Bisht, Director (Housing), DDA.

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

The information was filed by Dr. Adla Satya Narayan Rao (the informant) against Delhi Development Authority (the OP) alleging contravention of section 4 of the Competition Act, 2002 (the Act). The informant applied for the DDA Housing Scheme 2010 on 13.12.2010 by



paying Rs. 1,50,000/-. The draw of lots was held on 18.04.2011 and informant was allotted Flat no. 608 in Pocket D-6 in Vasant Kunj. The informant received a demand letter dated 30.03.2012 from the OP for Rs. 87, 28, 957/- less the initial amount Rs. 1,50,000/- to be paid latest by 26.09.2012.

1.1 The informant paid the demanded amount on 23.06.2012 and an amount of Rs. 3,99,125/- for stamping of conveyance deed was also paid. The informant made the payment for the flat by taking a loan from Delhi Cooperative Housing Finance Corporation Ltd. since any default would lead to cancellation of the allotment and deduction of Rs. 1,00,000/- as cancellation charge.

1.2 The informant alleged that the OP enjoyed near monopoly conferred upon it by the statute i.e. Delhi Development Act, 1957 in the development of planned townships, colonies or complexes. According to the informant, the relevant market was the service of real estate in the development, provision, and disposal of flats valued upto Rs. 1 crore as part of townships, colonies or complexes, in the entire region of Delhi. It was also submitted that even after waiting for more than 6 months the OP did not complete the construction of the flats and the informant who made the payment of the flat by selling another immovable property and taking a loan, became a captive consumer with no way out. Allottees had to pay full price of the flat even when the flat was not fully constructed.

2. The informant alleged that the conditions imposed in the OP's Scheme were abusive. It was alleged that in clause 1 of the Scheme 2010, OP announced that all flats were complete and ready for occupation whereas the ground reality was different. Further, even though DDA received full



payment from allottees, the flats were nowhere close to completion. The scheme at Vasant Kunj provided that the flats would be fully furnished, whereas only a bare structure stood there at the time of filing of information with no clearance from the fire department, no water connection, no electricity connection etc. The informant annexed newspaper reports giving the exact condition of the flats alongwith recent photographs of the flats and the complex.

- 2.1 The informant alleged that the clauses 11, 12 and 14 of the DDA Scheme were one sided and heavily loaded in favor of the OP. Further, the scheme did not provide for payment of interest or refund of the full amount in case of delayed construction whereas it provided for forfeiture of the entire amount paid in case of non-payment. The informant placed reliance on the decision of the Commission in *Belaire Apartment Owners Association V. DLF Ltd.* (Case No. 19/2010).
3. The Commission heard the informant and the OP. The OP in its written submissions submitted that there had been no contravention of the provisions of the Act. It was clearly stated in the Scheme that the flats will be allotted on *as is where is* basis. It further submitted that to avoid theft of fittings etc. the fitting in the flats were being made on giving possession to allottee by the engineering staff present at the site.
4. The contravention of section 4 of the Act calls for assessment of the relevant market, dominant position of the OP in the relevant market and subsequently, the abuse of the dominant position, if any. The OP is a Government Department constituted under the Delhi Development Act, 1957. The objects of the authority were given in section 6 of the Delhi Development Act, 1957. As per the objects, the authority has to promote and secure the development of Delhi according to plan



and for that purpose the Authority has the power to acquire, hold, manage and dispose of land and other property, to carry out building, engineering, mining and other operations, to execute works in connection with supply of water and electricity, disposal of sewage and other services and amenities etc.

- 4.1 By virtue of its functions, the OP falls within the definition of term 'enterprise' defined under section 2(h) of the Act since it was department of the Government engaged *inter alia* in the activity of building (constructing) flats and also acquired/ controlled land in the territory of Delhi. However, it is apparent from the provisions of the DD Act, OP was also made responsible to regulate the development of Delhi. Thus, OP played twin roles i.e. a regulator as well as of a developer of real estate in the National Capital Territory of Delhi.
- 4.2 The relevant market in this case would be *the provision of service for sale of residential flats in Delhi*. The OP is the biggest real estate developer in Delhi and no other developer could match/reach the size and structure of the OP. Hence, the OP was in a dominant position in the relevant market.
- 4.3 Clause 14 dealt with period of payment and provided that the allottee pay 15% interest in case of delay in making payment beyond three months whereas similar clause for payment of interest was not provided if there was delay on behalf of OP in handing over the possession, indicating one sidedness of the Scheme. Further, clause 9 stated that the OP was to pay only 5% interest in case of delay beyond four months when registration money to unsuccessful applicants was to be refunded.



- 4.4 In clause 1 of the Scheme, the flats were stated to be newly constructed and ready for occupation, which fact was disputed by the informant. When OP was asked to clarify this fact, it did not sufficiently support its stand in the submissions made before the Commission. The language of clause 17 of the Scheme suggested that the OP would not entertain any complaints on the issue of quality of material used or workmanship or any other defect in the construction of the flats, absolving itself of the responsibility.
- 4.5 The above indicates that the scheme was heavily loaded in favour of OP and *prima facie* imposed unfair conditions on the allottees. Therefore, the allegations under section 4 of the Act for abuse of dominant position against the OP need examination. From the facts disclosed by informant *prima facie* it appears to be a case of contravention of section 4(2)(a)(i) of the Act.
- 4.6 In view of the above discussion, there exists a *prima facie* case for investigation of allegations by informant for infringement of the provisions of the Act. The Director General is directed to conduct investigation in the matter under section 26(1) of the Act.
- 4.7 The Secretary is directed to send a copy of this order to the office of the DG. The DG shall investigate the matters for contravention of the provisions of the Act. In case the DG finds that the OP was in contravention of the provision of Act, it shall also investigate the role of the persons who at the time of such contravention were in charge of and responsible for the conduct of the business of the OP so as to fix responsibility of such persons under section 48 of the Act. The DG shall give opportunity of hearing to such persons in terms of section 48 of the Act. The report of DG be submitted within 60 days from receipt of the order.



4.8 Nothing stated in this order shall tantamount to final expression of opinion on merits of the cases and the DG shall conduct investigation without being swayed in any manner whatsoever by the observations made herein.

The Secretary is directed to inform the parties accordingly.

New Delhi

Date: 11-06-2013

Sd/-
(Ashok Chawla)
Chairperson

Sd/-
(Anurag Goel)
Member

Sd/-
(M.L.Tayal)
Member

Sd/-
(Justice (Retd.) S.N. Dhingra)
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