



**COMPETITION COMMISSION OF INDIA**

**Case No. 24 of 2014**

**In Re:**

**Shri Shyam Vir Singh**

**E-14, Saket**

**New Delhi**

**Informant**

**And**

**M/s DLF Universal Limited**

**DLF Centre**

**Sansad Marg**

**New Delhi**

**Opposite Party**

**CORAM**

**Mr. Sudhir Mital  
Member**

**Mr. Augustine Peter  
Member**

**Mr. U. C. Nahta  
Member**

**Mr. M. S. Sahoo  
Member**

**Appearances:** *For the Opposite Party:* Shri Ramji Srinivasan, Sr. Advocate  
Shri Naval Chopra, Advocate and  
Shri Rajbeer Sachdeva



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## **Order under Section 26(6) of the Competition Act, 2002**

1. The information in this case has been filed by Mr. Shyam Vir Singh (hereinafter referred to as the '**Informant**') under Section 19(1) (a) of the Competition Act, 2002 (hereinafter referred to as the '**Act**') against M/s DLF Universal Limited, New Delhi (hereinafter referred to as the '**Opposite Party**'), *inter alia*, alleging contravention of provisions of Section 4 of the Act.

### **2. Brief facts and allegations:**

2.1 The Informant is a resident of New Delhi and the Opposite Party is a subsidiary of M/s DLF Limited, a renowned real estate development company in India, which holds 98.43% of its share capital. The Opposite Party is engaged in the business of development of real estate.

2.2 The Informant's family had booked five units of commercial office space aggregating to 9,668 square feet in DLF Corporate Greens project at Sector 74A in Gurgaon developed by the Opposite Party. The details of the flats booked are as follows: DCG -4 Flat No. 0107, total area 3,184 square feet in the name of Mr. Abhijeet Singh booked on 17.09.2010; DCG-2 Flat No. 0215, total area 1,621 square feet in the name of Mr. Abhijeet Singh booked on 26.06.2010; DCG-2 Flat No. 0304, total area 1,621 square feet in the name of Mr. Abhijeet Singh booked on 27.08.2010; DCG-2 Flat No. 0305, total area 1,621 square feet in the name of Ms. Usha Singh booked on 27.08.2010 and DCG-2 Flat No. 0106, total area 1,621 square feet in the name of Ms. Deepika Sangwan booked on 26.06.2010. Accordingly, Commercial Office Space Buyers Agreements (hereinafter referred to as the '**Agreement/COSBA**') were entered into between above said family



members of the Informant and the Opposite Party. The Informant has stated that, as per the Agreement, the possession of the said five commercial office space units was to be handed over between 20.06.2011 to 29.09.2011.

2.3 It was averred in the information that the Opposite Party, which belongs to the DLF Group (OP group), is dominant in Gurgaon. In support of this contention the Informant had submitted that between 1981 and 1990, DLF had got 57 of the 101 reality project licenses. It was also submitted that DLF office segment was nearly 32 million square feet including developed as well as on-going projects, out of which 15.23 million square feet was located in Gurgaon. Also, throughout India the land bank of DLF was about 312 million square feet out of which 143 million square feet is in Gurgaon alone.

2.4 Based on the aforesaid, the Informant had alleged that DLF group is a dominant player in commercial and residential real estate sector in Gurgaon and had been abusing its dominant position by imposing unfair conditions on the buyers. The Informant referred to the various clauses of the Agreement and alleged them to be unfair and abusive.

2.5 The Commission formed a prima facie opinion that there appeared to be a violation of the provisions of section 4 of the Act and *vide* Order dated 23.06.2014 directed the Director General (DG) under section 26(1) of the Act to conduct investigation into this matter and submit investigation report. Accordingly, the DG submitted its investigation report on 01.09.2015.



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### **3. Investigation by the DG**

3.1 To investigate whether the Opposite Party/ OP group had contravened the provisions of section 4 of the Act, the DG identified the following three sub-issues in the report:

- (i) Relevant market;
- (ii) Dominance of the Opposite Party/ OP group in the relevant market;
- (iii) Whether the terms and condition of Commercial Office Space Buyers Agreement/Agreement were abusive in terms of the provisions of section 4 of the Act.

3.2 While assessing the relevant market, the DG took into account various factors like physical characteristics/ end use of commercial property vis-à-vis residential property, price of commercial property vis-à-vis residential property, consumer preferences, locational advantage, difference in regulatory provisions governing the commercial and residential properties, etc. and concluded that commercial property is a separate product market from the residential property. In the instant matter, the DG found '*the market for the services of development and sale of commercial space*' to be the relevant product market.

3.3 It was opined that in view of factors like different authorities, rules regulations, master plan, availability of resources, prices, geographical distances, connectivity with airport and capital and the preferences of the consumers, '*Gurgaon*' appears to be a separate geographic market. The conditions prevailing in Gurgaon in terms of above stated attributes are different and distinguishable from Delhi and Noida or other areas of NCR. Also, in terms of the provisions of section 19(6)(b) "local specification requirements", being different



than other areas, Gurgaon is considered to be the relevant geographic market. In view of the above discussion, the DG delineated the relevant market in the present case as “*the market for the services of development and sale of commercial space in Gurgaon*”.

3.4 On the issue of dominance of the Opposite Party, the DG stated that the relevant market is highly fragmented due to presence of large number of real estate developers engaged in development of commercial spaces and the OP Group is not the single largest player in the market. For the purpose of investigation, the DG considered the following factors provided under section 19(4) of the Act:

a) **Market Share:** The DG analyzed the market share of the Opposite Party (OP Group as a whole) on the basis of different parameters which are reproduced below:

i) **Land Licensed for development of commercial projects in Gurgaon by Department of Town & Country Planning Haryana:** The DG has procured details about total licensed land in the relevant market from the market players; Director General, Town & Country Planning Department, Haryana (DGTCP); and P.E. Analytics Pvt. Ltd.<sup>1</sup> (PropEquity) independently. Thereafter, the DG noted that there are 117 developers/ groups to whom licenses for commercial purpose have been issued during the time period 2007-08 to 2013-14 for a total land of 896.66 acres. Investigation further revealed that out of 117 developers during 2007-08 to 2013-14, top 10 developers had obtained licenses for 386.54 acres of land, i.e., 43% of total licensed land. The remaining developers obtained

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<sup>1</sup> According to DG report, PropEquity is a company started in 2006 which tracks information on 45,000+ real estate projects, 8,200+ developers in 40 Indian cities and has a historical catalogued data for 5+ years.



licences for 57% of total licensed land. It was found that though the Opposite Party was holding the highest share in terms of licensed land, its market share was a mere 8.90% closely followed by Unitech, Bestech, IREO and Emaar MGF.

**ii) Launch of projects for commercial spaces:** The DG further analysed market share of developers in terms of total launch of commercial space, i.e., availability of saleable commercial space. It was revealed from the PropEquity data obtained by the DG for the period 2009-10 to 2013-14 that there were 70 developers who had saleable commercial space launched with them. At the beginning of financial year 2009-10, there was about 7.39 million square feet commercial space available for sale. With launch of a cumulative total of 22.99 million square feet commercial space during the period 2009-10 to 2013-14, the total available commercial space was 30.39 million square feet. Of which the highest market share was registered at 5.37% of Spaze Group. The OP Group was found to be at third position with a market share of 4.80%.

**iii) Quantum of commercial spaces sold:** As regards the total commercial space sold during the relevant period, it was found by the DG that from 2009-10 to 2013-14, about 18.9 million square feet of commercial space was sold by 67 developers. The highest share was held by Unitech Group (7.42%), closely followed by Vatika, Spaze, Vsquare Development Company, Baani and Emaar MGF. The OP Group was at 9<sup>th</sup> position with a market share of 3.02% in terms of quantum of commercial properties sold during 2009-10 to 2013-14.

Apart from market share analysis based on data obtained from DGTCP and PropEquity, DG also sought information from more



than 60 developers/builders regarding details of launches/sale of commercial space by their company/group in Gurgaon during 2007-08 to 2013-14 of which requisite information was submitted by 21 developers. On analysis of the information submitted by these 21 developers, DG found that with respect to launched commercial space, the highest market share for the period 2009-10 to 2013-14 was 19.76% of IREO group and the OP group was in 5<sup>th</sup> position with 13.02% share. Further, with respect to commercial space sold, the highest market share was 23.68% of Spaze group and OP group was in 5<sup>th</sup> position with a market share of 11.72%. It is noted by the DG that the market is highly fragmented and that a year on year analysis of the data reveals that none of the developers were on the No. 1 position consistently for two or more years. The market share in the range of 10% in such market cannot be considered as dominant.

In view of the above discussion, the DG concluded that the Opposite Party's market share, calculated on various parameters negated the existence of dominance in its favour.

- b) Size and Resources of the Enterprise:** The DG noted that with regard to commercial space for sale in the relevant market is concerned, there are many other big players in Gurgaon. The total land available and the size of projects undertaken by the other players were found to be almost matching that of the OP Group in terms of quality as well as quantity. The DG also observed that the OP group may appear to be strong due to its Cyber City project, but since this project is for leasing and not for commercial sale, it is in a different relevant product market and cannot be considered for assessing OP Group's dominance in the instant case. It is noted that the existence of several developers in the relevant market like



Vatika Group, Spaze, Vsquare Development Company, Baani, Emaar MGF, M3M India, *etc.* is one of the reasons why the OP Group is found to be not in a dominant position in the relevant market. The DG found that during the relevant period, many other players entered the relevant market, making the market very competitive and fragmented. In terms of total land bank in India and its value as on 31.03.2014, Unitech was found to be on top with 26.99% share in land bank and 34.60% in terms of value with OP group in 3<sup>rd</sup> position with 8.58% in terms of land bank and 23.99% in terms of its value. However, in terms of the land bank and its value in Gurgaon, Emaar MGF was found to be on the top position followed by Unitech, Vatika and OP Group. It is also observed by the DG that with 8.17% share of the total land bank (acres) in Gurgaon and 15.97% share in terms of its value, the OP Group held fourth position both in terms of land bank and its value. The DG has concluded that the analysis of facts gathered during the investigation does not indicate that the OP group was having any advantage of size and resources over the competitors in the market in terms of land bank or its value and hence, these do not indicate that OP group has a dominant position.

On the analysis of financial strength of the top developers in terms of their Assets and Liabilities, the DG has noted that DLF is at the top position with huge reserve & surplus of Rs. 27038.58 crore in whole and Rs. 17418.05 crore reserves & surplus in its real estate business (FY 2013-14), indicating its significant financial strength as compared to its competitors. However, the DG has noted that the investigation has revealed that on account of such economic strength, no player including the OP group was able to impact the prices or supply in the relevant market. Thus, though the OP group has



significantly high financial strength as compared to its competitors, it has not provided a position of strength to the OP group in the relevant market and the same has not enabled the OP group to operate independently of competitive forces prevailing in the relevant market.

- c) **Dependence of Consumers and Entry Barrier:** The DG found that during the relevant period, more than 35 new companies have launched their projects in Gurgaon in the relevant market and in terms of area, a total of 30.39 million square feet commercial space was launched. OP group had a share of about 4.80% in these launches. Further, the DG found that there were no entry barriers as such to impede new entry into the market. During 2009-10, 2010-11 and 2011-12, major developers like IREO, Emaar MGF, Spaze, Unitech, Vatika, Hines, M3M and Ansal launched their commercial space projects in the relevant market. Therefore, a buyer had several options in the market. The investigation did not reveal that there was any kind of dependence of the consumers on the OP group in the relevant market. Further, the market position of the OP group was not found to be resulting into any kind of entry barrier in the market.

In view of the foregoing, the DG concluded that the Opposite Party was not dominant in *the market for the services of development and sale of commercial space in Gurgaon.*

- 3.5 Though the DG concluded that Opposite Party is not dominant in the relevant market, each of the clauses in the Agreement alleged to be unfair and abusive by the Informant were analysed by the DG within the purview of Section 4(2)(a) of the Act. After having examined the alleged unfair clauses, the DG opined that such one sided and



arbitrary clauses were imposed by OP group not because of its dominance but because of the prevalent practice adopted by the real estate developers across the segment. In the absence of dominance, no contravention was found by the DG against the Opposite Party.

#### **4. Replies of the Parties**

##### ***Informant***

- 4.1 The Informant, in his written submission dated 26.10.2015, submitted that as an individual he could gather information only from the public domain regarding the dominance of the Opposite Party during the launch period of the property in Gurgaon. He stated that the entire matter rested on the investigation report of the DG and since no violation has been found by the DG in its investigation, he prayed that the Commission pass an order as deemed appropriate.

##### ***Opposite Party***

- 4.2 The Opposite Party, in its written submission dated 27.10.2015, agreed with the DG's finding that it is not dominant in the relevant market. However, it has differed from the relevant geographic market identified in the investigation report of the DG stating that it should broadly extend to all of National Capital Region and not just Gurgaon. With regard to alleged unfair clauses in the Agreement which the DG has found to unfair and arbitrary, the Opposite Party submitted that in the light of previous orders of the Commission where it has been held that in the absence of dominance, no abuse can be assessed under the Act, the same will apply in the instant case.



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## 5. Issues and Analysis

- 5.1 The Commission has perused the materials available on record and heard the arguments advanced by the counsels appearing on behalf of the Opposite Party. The case was scheduled for hearing on 03.11.2015 and was adjourned to 10.11.2015 on request of the counsel for Opposite Party. The Informant did not appear for hearing and only submitted its written submission to the Commission.
- 5.2 It is observed that the Informant's main grievance emanates from the Agreement that was entered into between the family members of the Informant and the Opposite Party. The Informant had alleged that the Opposite Party being a dominant player in the market has imposed unfair and arbitrary terms and conditions in the Agreement and that such conduct violates the provision of section 4 of the Act.
- 5.3 Pursuant to perusal of the report of the DG and the replies filed by the Opposite Party and the Informant and arguments advanced by the advocates appearing on behalf of the Opposite Party and other materials available on record, the Commission is of the opinion that the issue for determination in the instant case is: *Whether the Opposite Party has contravened the provisions of section 4 of the Act?*
- 5.4 Section 4 of the Act proscribes abusive conduct by a dominant enterprise. Since the conduct of the Opposite Party needs to be analysed under section 4 of the Act, the existence of a position of dominance in terms of the Act needs to be determined first. There can be no abuse of dominance in the absence of dominance. The position of dominance of an enterprise is, usually, with context to a relevant market within which such an enterprise is alleged to be



abusing its position. Given the foregoing, the Commission before going into the conduct deems it appropriate first to determine the following:

- a. *What is the relevant market?*
- b. *Whether the Opposite Party is a dominant player in that relevant market or not?*

### ***Relevant Market***

5.5 With regard to the relevant product market, the DG has differentiated commercial space from residential units/plots. The very objective of defining relevant market is to identify the boundaries of competition and to assess whether the competitors are capable of preventing the enterprise in question from operating or behaving independently of the prevailing competitive constraints. A relevant product market, as the Act defines, is a market comprising all those products or services which are regarded as interchangeable or substitutable by the consumer, by reason of characteristics of the products or services, their prices and intended use. With regard to this case, the Commission agrees with the findings of the DG that the services of development and sale of residential units/ plots cannot be considered as the substitute of the services for development and sale of commercial space. The requirements, use and purpose of a commercial space is totally different from those of a residential unit. A consumer intending to buy a commercial space will consider a more business centric location than a residential one. Also, a commercial space in a building or area will not have allied amenities like clubs, park, schools, etc. attached to it like those offered with residential units/plots. The Commission, therefore, agrees with the finding of the DG that the relevant product market in the instant case is *the market for the services of development and sale of commercial space.*



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5.6 The DG, in its report concluded the city of *Gurgaon* to be the relevant geographic market. It is noted that the DG has considered factors like different regulatory authorities and hence different rules and regulations for Gurgaon, Delhi, Noida, etc., separate master plan, differential cost of land development, prices, geographical distances, connectivity with airport and capital and the preferences of the consumers to delineate the geographic market. The Opposite Party has, however, argued that the relevant geographic market should extend to the whole of National Capital Region (NCR). The Commission does not agree with this argument. It may be noted that a relevant geographic market means an area where goods or services are sufficiently inter-changeable or substitutable under similar conditions of competition and are distinct from its neighbouring areas. The Commission is of the view that the entire region of NCR cannot be said to be one market. Though like Gurgaon, other cities in NCR like Ghaziabad, Faridabad and Noida also enjoy proximity to Delhi, however, in case of a commercial property, apart from the factors as stated by the DG, other aspects like the kind of commercial activity supported by the ecosystem in the area, locational advantage for the business, potential transportation/travel cost in terms of time as well as money for the business, the level of development of infrastructure, *etc.* play a crucial role in consumer preferences and hence in determining the relevant market.

5.7 The Commission observes that if the cities in NCR like Noida or Ghaziabad or Faridabad are compared with Gurgaon on the criteria laid down above it is apparent that the conditions of competition in these cities are not homogenous. Hence, these cannot together be considered as one geographic market. Even if there is a 5% increase in the price of the properties in Gurgaon, a consumer's preference



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will not change, since there are other external factors to be considered while purchasing a commercial space in the market. Also, the market for Delhi is altogether a different scenario. It may be pertinent to highlight here that the Commission has already held Delhi to be a distinct geographic market for the sale and development of commercial space in Case No. 85 of 2014 *vide* its order dated 29.01.2015 under section 26(2) of the Act. The geographic region of Gurgaon has gained relevance owing to its unique circumstances and proximity to Delhi, Metro Stations, preference by MNCs, big commercial and institutional centers, shopping malls, well developed infrastructure, wide roads, *etc.* The DG has rightly noted in its report that the region started witnessing development in real estate due to increase in economic activities. In other words, Gurgaon has become a preferred location for many. Having said that, the Commission opines that the relevant market in the instant case may be considered as the *market for the services of development and sale of commercial space in Gurgaon.*

5.8 The Commission observes that the DG has primarily relied upon three sources to obtain data for analyzing the market share, size & resources of different players, and the land bank in credit of each player in the relevant market, i.e., DGTCP and Haryana Urban Development Authority (HUDA), PropEquity and from other market players/developers. With regard to the source of data relied upon from the regulatory authorities like DGTCP and HUDA, it is noted that such data are available in public domain and does not require any further verification as such. It is further noted that the DG has also relied upon the data collected from PropEquity to draw its conclusions with regard to various players and their respective positioning in the relevant market. It is also noted that the data



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obtained from PropEquity has been used in conjunction with the data collected from other developers.

5.9 In the instant case, in order to analyse the market share of the OP Group in respect to licensed land allotted by the Department of Town & Country Planning, Haryana, the DG has provided data of commercial licenses granted to all the developers from the financial year 2007-08 to 2013-14. It is noted from the data that OP Group holds 1<sup>st</sup> Position. However, the market share is 8.90% and its competitors such as Unitech, Bestech, IREO and EMAAR MGF are at close range i.e 7.82%, 6.00%, 4.88% and 3.45% respectively. Further, with regard to the total commercial space launched during the period 2009-10 to 2013-14, the DG has referred to the data collected by PropEquity. It is observed from the data provided by the DG in its report that the OP Group is one of the many developers in the relevant market and is at 3<sup>rd</sup> position with a market share of only 4.80%. Furthermore, on the total commercial spaces sold it is seen that OP Group holds 9<sup>th</sup> position and as per the information submitted by other developers also, OP Group held 5<sup>th</sup> Position. In view of this, it can be inferred that OP Group does not hold a dominant position.

5.10 While assessing the economic strength of the OP Group, the DG has referred to the total land bank allotted to the developers in Gurgaon region. The DG has not found the OP Group in top position in this regard also. However, the financial strength of the OP group is evident from its assets and liabilities, as it has huge reserves and surplus exceeding that of their competitors. Even so, a consideration of other factors like large number of players in the market, fragmented nature of market, the number of commercial projects launched and sold by OP and its competitors over the past five years



indicate that OP Group does not hold a significant position to influence the market.

5.11 With regard to the dependence of consumers on OP Group and countervailing buying powers, it is noted from the data available on record that there are several established real estate players operating in the same field from which a consumer can choose from in the same geographic area. Given the options available in the relevant market, it does not appear that the consumers were dependent on the OP Group. Moreover, there is no bar on the entry of new players in the market by the regulators/ authorities. The presence and rapid growth of the innumerable players in the market negates the issue of entry barrier in the instant case.

5.12 After assessing the facts of the present case in terms of the factors in the Act, the Commission is of the view that OP Group does not have the ability to influence the conditions of competition in the relevant market. It does not seem that it has the strength to operate independently of competitive forces prevailing in the relevant market or to impede effective competition in the relevant market. Therefore, the Commission is of the opinion that OP Group does not have a dominant position in the relevant market in terms of section 4 of the Act.

5.13 Since OP Group does not appear to be in a dominant position in the relevant market, the question of abuse of dominant position within the meaning of the provisions of section 4 of the Act does not arise. Accordingly, no case of abuse of dominance in terms of section 4 of the Act is made out against the OP Group in the present matter.



5.14 In view of the above, the Commission concludes that no contravention of the provisions of section 4 of the Act has been established in the present case.

5.15 The Secretary is directed to inform the parties accordingly.

**Sd/-  
(Sudhir Mital)  
Member**

**Sd/-  
(Augustine Peter)  
Member**

**Sd/-  
(U. C. Nahta)  
Member**

**New Delhi  
Date: 04-01-2016**

**Sd/-  
(M. S. Sahoo)  
Member**