



COMPETITION COMMISSION OF INDIA

Case No. 67 of 2010

In Re:

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| 1. Magnolia Flat Owners Association | Informant No. 1 |
| 2. Rahul Kapoor | Informant No. 2 |

And

- | | |
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| 1. M/s DLF Universal Limited | Opposite Party No. 1 |
| 2. Haryana Urban Development Authority | Opposite Party No. 2 |
| 3. The Director Town and Country Planning,
Haryana | Opposite Party No. 3 |

CORAM

Mr. Ashok Chawla
Chairperson

Dr. Geeta Gouri
Member

Mr. Anurag Goel
Member

Mr. M. L. Tayal
Member

Mr. Justice (retd.) S.N. Dhingra
Member

Mr. S. L. Bunker
Member



Order under section 42 of the Competition Act, 2002

This order shall dispose of the application filed under section 42 of the Competition Act, 2002 („the Act“) by the original informants („the applicant“) as well as an application moved by Shri Brij Raj Singh under sections 33 and 42 of the Act. Subsequently, Shri Brij Raj Singh sought withdrawal of the said application *vide* his application dated 03.01.2014. The Commission, however, *vide* its order dated 16.01.2014 dismissed his application under only section 33 of the Act as withdrawn.

2. The facts giving rise to filing of the present applications by the parties may be briefly noted.

3. The original informants in the instant application stated that the application is being filed to bring to the notice of the Commission the contravention of the Commission’s order dated 31.01.2012 wherein the Commission had passed a „cease and desist“ order under section 27 of the Act which was stated to be later confirmed and upheld by the Competition Appellate Tribunal („the Tribunal“) *vide* its order dated 09.11.2011 passed in Appeal No. 20 of 2011 and Appeal No. 22 of 2011. It is further stated that the said order was made applicable to the appeal filed by the opposite party No. 1/ non-applicant herein in Appeal No. 19 of 2012 by order dated 12.04.2012 of the Tribunal.

4. The applicant has stated that the „cease and desist“ order passed by the Commission and confirmed by the Tribunal was binding on the opposite party No. 1 and as such it was legally bound not to impose any unfair conditions in its agreement under challenge upon the buyers and the members of the informant association.

5. The specific abuse sought to be brought to the notice of the Commission is being inflicted in the form of demand letters being issued to



the members of the applicant association wherein the opposite party No. 1 has demanded exorbitant sums even amounting to Rs. 1,27,92,000/- (Rupees One Crore Twenty Seven Lakhs Ninety Two Thousand Only) from the members/ allottees under the garb of „super area“, a concept declared illegal and abusive by the Commission and imposition of the same by the opposite party No. 1 has been restrained by the „cease and desist“ order of the Commission.

6. The applicant has leveled various allegations against the opposite party No. 1 in the application which need not be reproduced in the present order.

7. It is the case of the applicant that it had approached the Tribunal with an application for stay on these exorbitant demands being made by the opposite party No. 1 upon the applicant herein and the amounts originally due from them. However, it is stated that the Tribunal instructed the applicant to approach the Commission for grant of relief prayed. It is also averred that keeping in mind the urgency of the matter and the immediate need for grant of the prayer, the Tribunal *vide* its order dated 09.01.2013 in Appeal No. 19 of 2012 instructed the Commission to dispose of such application as early as possible. For felicity of reference, the said order is quoted below:

O R D E R

9th January, 2013

The learned counsel seeks to withdraw I.A. No. 02/2013. Learned counsel further says that instead he would make an application before the CCI. If the application is made to the CCI, the CCI is requested to dispose of that application as early as possible.

List the matter on 7.2.2013.

8. It is alleged by the applicant that inspite of the cease and desist order passed by the Commission, the opposite party No. 1 is imposing abusive



clauses of the agreement upon the allottees which is clearly in contravention of the order of the Commission and the Tribunal. It is further alleged that such actions are in willful, blatant and deliberate contravention of the Act.

9. Based upon these averments and allegations, the applicant has prayed *inter alia* to the Commission to hold the opposite party No. 1 in contravention of the order of the Commission dated 31.01.2012 and to award maximum punishment for the same.

10. Similar demands were also made upon the applicant Shri Brij Raj Singh by the opposite party No. 1 which is evident from the letter dated 28.11.2012 issued by the opposite party No. 1 to Shri Brij Raj Singh.

11. The opposite party No. 1 filed replies to the applications of the original informants as well as Shri Brij Raj Singh.

12. So far as the reply filed by the opposite party No. 1 to the application of Shri Brij Raj Singh is concerned, the opposite party No. 1 has contended that after final disposal of the case, no application can be filed by the applicant (Shri Brij Raj Singh) for intervention as the Commission has become *functus officio*. It was contended that the applicant Shri Brij Raj Singh was not a party to Case No. 67 of 2010 and as such he has no *locus standi* to move any application including an application under section 42 of the Act.

13. In reply to the application of the original applicants, it was pointed out by the opposite party No. 1 that the order dated 31.01.2012 which is alleged to be contravened in the instant proceedings was passed under section 27 of the Act in Case No. 67 of 2010 („the Magnolias case“) was on similar lines as orders passed in Case No. 19 of 2010 („the Belaire“ case) and Case No. 18 of 2010 („the DLF Park Place case“). It is stated that the opposite party No. 1 has filed appeals before the Tribunal against the aforesaid three identical orders which are pending final hearing on day-to-day hearing basis, being Appeal



Nos. 20 of 2011 („the Belaire appeal“), 22 of 2011 („the DLF Park Place appeal“) and 19 of 2012 („the Magnolias appeal“).

14. It is further averred that in respect of all the three cases, the opposite party No. 1 company had issued final letters of demand. In the Belaire case the notice of demand was sent on 31.01.2012 and in case of the DLF Park Place case on 27.02.2012. In the present matter relating to the Magnolias case the notice of demand was sent on 28.11.2012. Both in the case of the Belaire case and the DLF Park Place case, upon issuing the said notices of demand, applications similar to the present application, were filed by the respective association of apartment allottees under section 42 of the Act before the Commission for alleged contravention of the aforesaid order passed under section 27 of the Act. Similar application has now been filed in the present matter relating to the Magnolias case in respect of the letter of demand dated 28.11.2012.

15. It is also highlighted that during the pendency of the above appeals before the Tribunal, suggestions regarding modifications of the terms of the agreements were invited from the parties without prejudice to their respective contentions and the same were forwarded to the Commission for its suggestions, which were then to be sent to the Tribunal for its consideration in the appeals. Accordingly, the Commission passed an order in the Belaire case and appeal (Case No. 19 of 2010- Appeal No. 20 of 2011) as supplementary order under section 27 dated 03.01.2013 incorporating its suggestions regarding the proposed modifications. The said order was followed in the DLF Park Place case and appeal (Case No. 18 of 2010- Appeal No. 22 of 2011) as well as a separate order in the Magnolias case and appeal (Case No. 67 of 2010- Appeal No. 19 of 2011) both dated 10.01.2013.

16. Against the aforesaid supplementary orders dated 03.01.2013 in the Belaire case and dated 10.01.2013 in the case of *The DLF Park Place*, appeals were preferred by the opposite party No. 1 before the Tribunal being Appeal



Nos. 08 and 09 of 2013 respectively. It has been contended that the Tribunal after hearing the parties passed a detailed order dated 12.02.2013 which comprehensively dealt with the rights of the parties during the pendency of the appeals before the Tribunal *vis-a-vis* the demand letters issued by the opposite party No. 1 to the allottees and directed that the rights of the parties would be finally determined upon the disposal of the appeals which are stated to be heard on a day-to-day basis. For sake of convenience, relevant extract from the aforesaid order are noted below:

...However, Shri Salve expresses his apprehensions about the aforesaid three orders under Section 42 of the Act by CCI and says that they will be under the constant hanging sword of those orders. We feel that this is also not necessary because the CCI has made it very clear that these orders have been passed in pursuance of the order dated 03.01.2013, yet the final execution of those orders shall be subject to the final outcome of the main appeal pending before us against the order dated 12.08.2011. Therefore, we need not pass any specific orders regarding the interim relief. It is obvious that nothing can proceed in terms of the purported orders under Section 42 of the Act unless the appeal itself is finally decided one way or the other. We, therefore, do not propose to pass any such orders.

...Our attention was invited to the fact that inspite of the 95% of the consideration having been claimed to have been paid, yet these persons do not have the advantage of the possession of the flats and this has put them in a miserable situation When this was put to the learned counsel for DLF, Shri Salve as well as Shri Ravinder Narain, they firstly suggested that even if the demands have been raised by the DLF vide their letters dated 23.03.2012 and 31.01.2012, those letters will not be acted upon by the DLF in the sense that non-compliance of these letters would not result in



cancellation of the allotment in favour of the proposed flat owners at least till the final results of the main appeal This is undoubtedly a fair statement...

...However, Shri Salve and Shri Narain, pointed out that if the payments as demanded are made, those payments could be without prejudice to the rights of those persons who wanted to take possession after making the payments in terms of the letter dated 31.01.2012. We, therefore, clarify that if the proposed owners choose to make the payments as demanded by the DLF and get the possession, then those payments would be without prejudice to their rights in the main appeal. We hope that these orders would allay the woes of the proposed flat owners to some extent...

17. It has been contended that the present application dated 17.01.2013 under section 42 of the Act has been filed on similar lines in respect of notice of demand dated 28.11.2012 in relation to the Magnolias case whereas the notice of demand in the Belaire case dated 31.01.2012 and that in the DLF Park Place case dated 27.02.2012 have been dealt with by the Tribunal, as detailed above. In these circumstances, it has been pointed out that the Tribunal has already clarified the position with regard to similar demands in its order dated 12.02.2013 and as an appeal has been filed in the Magnolias case before the Tribunal as well together with a similar application for stay, it would be in the interest of justice to await the final decision of the appeals which are being heard on day-to-day basis by the Tribunal. Lastly, the contents of the application were denied as incorrect and the opposite party No. 1 sought its dismissal.

18. The Commission has very carefully perused the various replies and submissions made by the parties.



19. As noted by the Commission in its order dated 09.05.2013 in the present proceedings whether or not the opposite party No. 1 has contravened the order of the Commission *vis-a-vis*, the applicant herein, is not the subject matter of the appeals pending before the Tribunal. The subject matter of appeals before the Tribunal is a final order passed by the Commission under section 27 of the Act. The Tribunal while granting interim relief to the opposite party No. 1 had stayed recovery of penalty from the opposite party No. 1. The Tribunal had, however, not stayed the cease and desist order. Thus, the opposite party No. 1 was bound to act in accordance with the order of the Commission except the payment of the penalty imposed by the Commission.

20. In these circumstances, an inquiry was conducted by the Commission into the alleged violation of order of the Commission *vide* the said order dated 09.05.2013 and accordingly the opposite party was directed to furnish the information as specified in the said order to enable it to conduct the inquiry into the allegations leveled by the applicants.

21. Before advertng to the merits of the case, the Commission deems it appropriate to briefly notice some preliminary objections raised by the opposite party No. 1. It was contended by the opposite party No. 1 that after final disposal of the case, no application can be filed by the applicant (Shri Brij Raj Singh) for intervention as the Commission has become *functus officio*. Further, it was agitated that the applicant Shri Brij Raj Singh was not a party to Case No. 67 of 2010 and as such he has no *locus standi* to move any application including an application under section 42 of the Act.

22. The plea is thoroughly misconceived. It is no doubt true that after passing of final orders in terms of the provisions contained in section 27 of the Act, the inquiry conducted by the Commission comes to an end. However, the proceedings contemplated under section 42 of the Act, by very nature, will arise post passing of the orders by the Commission. The inquiry envisaged under section 42 of the Act may be initiated by the Commission either *suo*



moto or on an application moved by any member of the public bringing to the notice of the Commission the alleged contravention by a party against whom an order was issued by the Commissions.

23. Much was made by the counsel appearing for the opposite party No. 1 based upon the proceedings pending before COMPAT and emanating out of the orders passed by the Commission, contravention whereof is alleged and is the subject matter of the present proceedings. The Commission has noticed the various orders passed by COMPAT in those proceedings. No stay on the cease and desist order passed by the Commission has been granted by COMPAT. In fact, when the applicant approached COMPAT with an application seeking stay on the impugned demands, COMPAT requested the Commission to dispose of the said application instead. In these circumstances, nothing turns upon the preliminary submissions and objections raised by the counsel appearing for the opposite party No. 1.

24. It was also urged before the Commission by the counsel for the opposite party No. 1 that the two directions contained in the order passed by the Commission under section 27 dated 31.01.2012 in *The Magnolias* case relating to (i) cease and desist and (ii) to modify conditions, operate in different fields. It was suggested that the first direction- “to cease and desist from formulating and imposing such unfair conditions in its agreements with buyers in Gurgaon” does not relate to the present agreement in which the Term and Conditions had already been formulated and imposed. The second direction- “to suitably modify unfair conditions imposed on its buyers as referred to above..... “required DLF to suitably modify the conditions of the „present“ Apartment Buyers Agreement, which were held to be unfair. It was suggested that the two directions operate in different fields and it was sought to be argued that only the second direction relates to the „present“ Apartment Buyers Agreement.

25. The Commission has very carefully perused the material available on record besides examining the submissions made by the counsel for the opposite party No. 1.

26. The main grievance of the applicants in the present proceedings relate to the demand letters issued to the members of the informant No. 1 association by the opposite party No. 1 under the garb of „Super Area“.

27. It may be observed that the Commission *inter alia* found the following term of the Agreement as unfair being in contravention of the provisions of section 4 of the Act:

...DLF enjoys unilateral right to increase / decrease super area at its sole discretion without consulting allottees who nevertheless are bound to pay additional amount or accept reduction in area:

...the Apartment Allottee agrees and undertakes to pay for the increase in super area immediately on demand by the Company as and when such demand is intimated to the Apartment Allottee by the Company irrespective of receipt of the Occupation Certificate and if there shall be a reduction in the super area, then the refundable amount due to the Apartment Allottee shall be adjusted by the Company from the final installment as set forth in the Schedule of Payments in Annexure III” (Ref.: clause 1.6 of the Agreement)...

28. The Commission observed that the opposite party No. 1 pursuant to the inquiry conducted by the Commission furnished some information which is clearly demonstrative of the contravention of the order of the Commission. The relevant para of the composite reply of the opposite party No. 1 dated 15.01.2014 is instructing and revealing and the same is noted below:



It may be mentioned here that such substantial increase in 'Super Areas' of about 36% was only in respect of 6 apartments out of which the matter is already resolved and the terrace area has been taken by the allottees of 4 such apartments. It is expected that the matter would also be resolved with the remaining 2 allottees.

29. Furthermore, the Commission in its order dated 01.08.2013 noted the facts placed before it regarding additional super area. It was noticed therein that charges for additional super area were claimed by the opposite party No. 1 from the flat owners. Furthermore, it was observed therein that the additional super area in this case was around 36% of the initial super area shown in the agreement. It transpired that the opposite party No. 1 had increased the size of entrance to the building block. The roof of this entrance, falling before the flats at first floor was included as part of the super area of the first floor flats resulting into such high increase in the super area for which the opposite party No. 1 raised a demand of more than Rs. 2 crore on each flat owner. It also transpired that the opposite party No. 1 had given tentative possession to the flat owner before obtaining completion certificate, so that the flat owner may do interiors and the flat owner did flooring work and other work on this area of the roof falling in front of his flat. At that time the flat owner was not informed by the opposite party No. 1 that this part of the roof which fell before his flat would be considered as a balcony and would form part of the additional super area.

30. In terms of the provisions of section 42(1) of the Act, the Commission may cause an inquiry to be made into compliance of its orders or directions made in exercise of its powers under the Act. Furthermore, by virtue of the provisions of section 42(2) of the Act, if any person, without reasonable clause, fails to comply with the orders or directions of the Commission issued under sections 27, 28, 31, 32, 33, 42A and 43A of the Act, he shall be punishable with fine which may extend to rupees one lakh for each day during



which such non-compliance occurs, subject to a maximum of rupees ten crore, as the Commission may determine.

31. On a careful perusal of the material on record and hearing the counsel for the parties, the Commission notes that the opposite party No. 1 had contravened the order of the Commission dated 31.01.2012 by issuing the impugned demand letters dated 28.11.2012. The opposite party No. 1 has failed to show any cause, much less any reasonable cause, for non-compliance of the aforesaid order. It is made clear that order passed by the Commission need to be complied with by the parties and the same cannot be permitted to be opted out by the parties through negotiations. No stay on the cease and desist order passed by the Commission was operating when the non-compliance occurred. The said demand letter has not been withdrawn till date.

32. In the circumstances, the Commission holds the opposite party No. 1 to be in contravention of the order of the Commission dated 31.01.2012 by issuing the impugned demand letters dated 28.11.2012 and as such the contravention started w.e.f. 28.11.2012 and the same continues till date. Accordingly, considering the totality of the facts and circumstances of the case, the Commission deems it appropriate to impose a fine of Rs. 50,000/- upon the opposite party No. 1 for each day of non-compliance which period is to be reckoned from 28.11.2012 till today (*i.e.* the date of passing of this order) totalling to Rs. 2,41,50,000/- (Rupees Two Crore Forty One Lakh Fifty Thousand), which the opposite party No.1 is directed to pay within a period of 60 days from today. If the non-compliance continues even beyond today, the opposite party No. 1 shall be further saddled with a fine of Rs. 1 Lakh per day for each day of non-compliance beyond today till the time the opposite party No. 1 purges itself of non-compliance or till the time the total fine reaches to the maximum statutory limit of Rs. 10 crores, whichever is earlier.

33. The opposite party No. 1 is directed to pay the fine accordingly.



34. In addition to imposition of fine upon the opposite party No. 1 for the non-compliance of the order, the Commission is of further opinion that the order dated 10.01.2013 passed by the Commission under section 42 of the Act in respect of the other two projects of the opposite party No. 1 be also made applicable to the present case as well. Accordingly, the Commission orders that the demand letters issued by the opposite party No. 1 to the allottees are not binding upon the applicants and the opposite party No. 1 is further directed to act *vis-a-vis* the allottees only in terms of the modified agreement as given in the supplementary order of the Commission unless the same is modified by the Tribunal in appeal.

35. The opposite party No. 1 is directed to deposit the penalty within a period of 60 days from the receipt of this order.

36. It is ordered accordingly.

37. The secretary is directed to inform the parties accordingly.

Sd/-
(Ashok Chawla)
Chairperson

Sd/-
(Geeta Gouri)
Member

Sd/-
(Anurag Goel)
Member



Sd/-
(M. L. Tayal)
Member

Sd/-
(S. L. Bunker)
Member

New Delhi

Date: 26/03/2014