



COMPETITION COMMISSION OF INDIA

Case No. 73 of 2014

In Re:

Amit Mittal

BD - 57, Vishakha Enclave,

Pitampura, Delhi-110088

Informant

And

M/s DLF Limited

Shopping Mall, Third Floor,

Arjun Marg, Phase – I, DLF City,

Gurgaon

Opposite Party No. 1

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

DLF Centre, Sansad Marg,

New Delhi

Opposite Party No. 2

CORAM

Mr. Ashok Chawla

Chairperson

Mr. S .L. Bunker

Member

Mr. Sudhir Mital

Member



Mr. Augustine Peter

Member

Mr. U.C Nahta

Member

Appearances:

For the Informant: Informant in person

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

1. The present information has been filed under section 19(1)(a) of the Competition Act, 2002 (the “Act”) by Shri Amit Mittal (hereinafter referred to as the ‘**Informant**’) against M/s DLF Limited (hereinafter referred to as ‘**OP 1**’) and M/s DLF New Gurgaon Homes Developers Private Limited (hereinafter referred to as ‘**OP 2**’) (collectively referred to as **OPs**) alleging, *inter alia*, abuse of dominant position in development and sale of residential units in Gurgaon in contravention of the provisions of section 4 of the Act.
2. Briefly, OP 1 is engaged in the business of development of residential, commercial and retail properties. As per the Annual Report of OP 1 for financial year 2012-13, OP 1 held 94.02% stake in OP 2. As per the scheme of amalgamation/merger dated 30.07.2013 by the High Court of Delhi, OP 2 amalgamated with M/s DLF Home Developers Limited, a wholly owned subsidiary of OP 1. By virtue of amalgamation, any reference to OP 2 would necessarily be construed as referring to M/s DLF Home Developers Limited also.
3. OP 2 launched a residential township by the name of ‘Regal Gardens at DLF Garden City’ (the ‘Project’) located in sector 90 of Gurgaon, Haryana consisting of 3BHK and 4BHK apartment units having floor area ranging between 1693 to 2215 square feet. The Informant applied for allotment of an apartment in the



above said project and paid earnest money amounting to Rs. 8, 59, 850. Thereafter, a non-negotiable Apartment Buyer's Agreement (hereinafter referred to as the 'Agreement') was executed between the Informant and OP 2 on 01.09.2012 and Apartment No. 4/Floor No. 15/Block D was allotted to the Informant.

4. The Informant has alleged that several clauses in the 'Agreement' are violative of provisions of section 4(2) (a) (i) of the Act, being highly unfair and discriminatory towards the buyers and heavily biased towards OP 2. Briefly, the allegations of the Informant, *inter alia*, are as under:

a) The 'Agreement' is non-negotiable and has to be executed by the Informant within 30 days, failing which the earnest money was liable to be forfeited without any notice by OP 2 to the Informant.

b) Clause 1.2 of the 'Agreement' provided for escalation of the price of the apartment if the cost of the materials used in construction and/or labour charges are increased which was fixed arbitrarily by OP 2.

c) Clause 1.5 provided for a rebate for early payment but the discretion to grant the rebate and methodology for calculation of such rebate was at sole discretion of OP 2. The Informant submitted that OP 2 has adopted arbitrary methods of calculating early payment rebates leading to unwarranted and undue financial profits to OP 2 at the cost of buyers.

d) The Informant has alleged that as per clause 1.9 of the 'Agreement', in case of any change in preferential location of the apartment due to change in layout plan, OP 2 shall adjust the said amount in the next instalment payable and the allottee shall have no other recourse except to the extent of such refund with interest. If as a result of such change, the apartment becomes additionally preferentially located, the allottee shall pay additional amounts to the OP 2, in the manner as demanded by OP 2.



- e) Clause 1.10 provides that in addition to total price, allottee was also required to mandatorily pay Rs.2, 50,000 for recreational club facility as provided by OP 2. In addition, allottee was also required to pay membership fees, annual club charges, and refundable security deposit for the club facility. All changes were subject to revision at sole discretion of OP 2.
- f) Clause 1.3 provided for External Development Charges (EDC) to be paid by the buyer on pro-rata basis and any increase in EDC by the Government of Haryana shall also be paid by the allottee on pro-rata basis. Unpaid EDC shall be treated as unpaid sale price of apartment and OP 2 was empowered to cancel the 'Agreement' and forfeit the Earnest Money Deposit (EMD) and other non-refundable amount.
- g) Clause 1.16 gave discretion to OP 2 or related concerns to enter into arrangement for generating and/or supplying electricity to the project. Upon such arrangement, the allottee shall have no-objection to the said arrangement. Tariffs shall be decided by OP 2 and the allottee shall have no right to raise any dispute.
- h) Clause 1.1 requires the allottee to compulsorily pay Rs. 4, 00, 00 towards exclusive use of the covered parking space, irrespective of whether he may or may not even own a car.
- i) Clause 9 of the 'Agreement' provided that OP 2 may change the building plans and layout plans at its sole discretion including additions in apartment floor plans, building plans, floor plans, specifications, etc.
- j) Clause 11(a) of the Agreement provided that OP 2 shall endeavour to complete construction of the Building/Apartment within 42 months of the application, subject to several exceptions. OP 2 is not subjected to any liabilities for non-compliance or for not honouring the timelines set out in the agreement.
- k) As per clause 11(b), OP 2 was empowered to suspend construction upon Force Majeure conditions existing and the allottee shall have no right to claim compensation of any nature for such period. The 'Agreement' may also be terminated by OP 2 if such conditions exist for a long time. In such situation, OP



2 shall refund the amount without any interest and the allottee would not have any right to claim any compensation.

1) Clause 14 provided for the allottee to give notice of termination if OP 2 fails to deliver possession after 42 months. Such notice has to be given within 90 days of expiry of 42 months and OP 2 shall be at liberty to sell the apartment on terms and conditions as it may deem fit. The allottee shall be allowed refund of amounts paid by him after the sale by OP 2 materializes but will not be entitled to any interest. No option for termination is available to the allottee in event of force majeure.

5. Apart from the above said clauses, the Informant highlighted several other clauses in the 'Agreement' as unfair and arbitrary which for the sake of brevity have been dispensed with.
6. The Informant has relied heavily on the Commission's order in earlier cases especially *Belaire Owners' Association vs. DLF Ltd. & Ors.* (Case No. 19/2010) where the Commission was of the view that OP 1 is dominant in the relevant market of 'services of developer/builder in respect of high-end residential accommodation in Gurgaon'. The Informant also mentioned that the same finding was confirmed by the Commission in its orders passed in cases pertaining to projects namely 'Park Place' (Case No. 18/2010) and 'Magnolia' (Case No. 67/2010).
7. Aggrieved by the above described abusive conduct of the OPs, the Informant prayed to the Commission to direct termination/modification of the 'Agreement' in line with the order in Case No. 19 of 2010.
8. The Commission perused the information available on record and heard the Informant at length. At the outset it may be noted that the Commission has



already received many informations where OP 1 has been *prima facie* found to be dominant in market for ‘provision of services for development of residential apartments in the territory of Gurgaon’. The allegations raised in this case are reasonably similar to those informations. The Informant is aggrieved by the one-sided and onerous conditions imposed in the ‘Agreement’ by OP 2 which as per the Informant has resulted in abuse of dominant position by OPs in the relevant market.

9. The relevant market proposed by the Informant is market for ‘service of mid-tier residential accommodation in upscale self-contained township in Gurgaon’. However, the Informant has not provided any cogent reasoning as to why mid-tier residential accommodation should be taken as relevant product market in this case. Considering the previous orders of the Commission and material placed on record, the Commission is of the view that market for ‘provisioning of services for development and sale of residential units in Gurgaon’ would be the correct market in the present case. In any case, since the conclusion on dominance does not seem to change in the present case irrespective of delineation of alternative relevant market definitions, the Commission considers it inappropriate to segregate the market into high-end/middle end, mid-tier etc. at this *prima facie* stage.
10. The Informant contended that OPs are dominant in the relevant market. It may be noted that OP 1 and OP 2 belong to the same group and as such their dominance as a group is required to be seen. The Commission has already held OP 1 to be dominant in the geographic market of Gurgaon. Although such cases were before the Commission for the ‘Agreement’ which were entered into from 2007 to 2010, in the absence of any material pointing to the contrary, the Commission is of the view that vis-a-vis OP 1, the market dynamics have not changed much and OP 1 still holds a dominant position in the relevant market. Further, OP 2, by virtue of being amalgamated with M/s DLF Home Developers Limited (wholly owned



subsidiary of OP 1), is a group entity of OP 1. Thus, OPs as a group, appears to be in a dominant position in the relevant market defined above. Some of the terms of the 'Agreement' seems onerous and one-sided and clearly depicts how OP 2 has misused its dominant position to mould the impugned clauses of the 'Agreement' in its favour. The said act of OP 2, *prima facie*, appears to be abusive in terms of section 4 (2)(a)(i) of the Act.

11. On the basis of foregoing, the Commission is *prima facie* of the opinion that the conduct of OPs appears to be in contravention of the provisions of section 4 of the Act. Accordingly, the Commission directs the Director General (DG) to cause an investigation into the matter and to complete the investigation within a period of 60 days from receipt of this order.
12. In case the DG finds that OPs have acted in contravention of the provisions of the Act, it shall also investigate the role (if any) of the persons who were in charge of and were responsible for the conduct of the businesses of such OPs.
13. It is, however, made clear that nothing stated herein shall tantamount to an expression of final opinion on the merits of the case and the DG shall conduct the investigation without being influenced by any observations made herein.
14. The Secretary is directed to send a copy of this order alongwith the information and the documents filed therewith to the Office of the DG forthwith.
15. It is ordered accordingly.

Sd/-
(Ashok Chawla)
Chairperson

Sd/-
(S. L. Bunker)
Member



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

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

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

New Delhi

Dated: 04/02/2015