



COMPETITION COMMISSION OF INDIA

Case No. 84 of 2014

In Re:

Mr. Vijay Kapoor

Address: C-22, Fateh Nagar, P.O. Tilak Nagar,

New Delhi – 110018

Informant

And

DLF Universal Limited

DLF Centre, Sansad Marg,

New Delhi

Opposite Party

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 Vijay Kapoor (hereinafter referred to as the 'Informant') against M/s DLF Universal Limited, (hereinafter referred to as the 'Opposite Party/OP') alleging, *inter alia*, abuse of dominant position in development and sale of residential units in Gurgaon in contravention of provisions of section 4 of the Act.
2. As per the facts stated in the information, OP approached the Informant through an agent in the month of December, 2012, for booking residential apartments in the project of OP namely, 'The Skycourt' at Sector 86, DLF Gardencity, Gurgaon Haryana (hereinafter referred to as the 'Residential Project'). The agent assured the Informant that total cost of the residential apartment would be Rs. One Crore with no hidden costs. The Informant was further informed that he will be offered a pre-launch discount of Rs. 500/- per sq. ft. and a demand for booking amount of Rs. 10,31,000 was made. The Informant received an allotment letter dated 07.01.2013, with a receipt for the booking amount paid. Though OP mentioned that it is enclosing a copy of schedule of payment, no such schedule was sent to the Informant.
3. On 20.01.2013, the Informant received a Demand-cum-Intimation Notice, dated 14.01.2013 in which OP demanded a sum of Rs. 10,89,150.80 which was supposed to be paid by 04.02.2013. The Informant protested against the demand notice but he was threatened that the allotment would be cancelled and amount already paid would be forfeited if the demanded money was not paid by the due date. On 15.03.2013, the Informant received the 'Agreement to Sell' (hereinafter



referred to as the 'Agreement'). The Informant after reading the said Agreement realised that the cost of the allotted apartment and the conditions of the Agreement were unfair, discriminatory and one-sided. The Informant wrote a protest letter to OP on 16.03.2013, expressing his unwillingness to pay the charges for parking, preferential location as the demand for these charges was alleged to be more than the total cost of the apartment which was intimated to the Informant earlier.

4. The Informant alleged that as per Clause 36 of the Agreement, failure to execute and deliver the Agreement within 30 days on the part of the buyer/allottee would amount to forfeiture of earnest money and non-refundable amount paid by the Informant. The Informant deposited the copies of the Agreement on 28.03.2013. Thereafter also, the Informant received demand letters from OP for various sums of money.
5. On 30.04.2013, i.e. after completion of 30 days, Informant communicated to the OP that he wanted to raise a loan for which he would be requiring a copy of the Agreement duly executed by OP. At that time, Informant was assured by the officials of OP that he will be provided with a copy of the Agreement soon. In the meantime on 11.09.2013, the Informant shifted to a different place and informed OP about change of address on 11.09.2013. On 28.10.2013, a cancellation letter was received at Informant's previous address. In the cancellation letter, OP had stated that it had forfeited Rs. 15, 97,219.73 and any other amounts paid by the Informant would be refunded separately.
6. The Informant further alleged that on a previous date i.e. on 31.07.2014, he received a letter dated 24.07.2014, wherein OP had accepted that the payment for the apartment is construction linked whereas as a matter of fact, the construction was started by the OP several months after the moneys being paid by the Informant.



7. Contending that OP had abused its dominant position by imposing extremely harsh and one sided terms and conditions in the Agreement, the Informant has, *inter alia*, prayed to the Commission to direct DG investigation in the matter.
8. The Commission has perused the information available on record and heard the Informant. At the outset it may be noted that the Commission has already received many informations where OP 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 issues raised in this case are also of the same nature where the Informant is aggrieved by the conduct of the OP which is alleged to be one-sided and discriminatory resulting into abuse of dominant position. The Informant has alleged that owing to its dominant position, OP has imposed hidden costs and onerous conditions on the buyers by way of an 'Agreement' which is extremely one-sided and biased towards OP.
9. The Informant has not proposed any relevant market in the present case. Considering the previous orders of the Commission and investigations carried out by the DG, it appears that market for 'provision of services for development and sale of residential units in Gurgaon' is the relevant market in the present case. The Informant has contended that OP is dominant and has abused its dominant position. It may be mentioned here that the Commission has already held OP to be dominant in the above mentioned relevant market. Although such cases were before the Commission for the agreements which were entered into between 2007 to 2010, in the absence of any material pointing to the contrary, the Commission is of the view that vis-a-vis OP, the market dynamics have not changed much and OP still holds a dominant position in the relevant market defined above. It is also apparent that OP has coaxed various sums of money from the Informant at various occasions by threatening cancellation of the allotment. Further the terms of the 'Agreement' appear one-sided and depict how OP has misused its dominant



position to mould the 'Agreement' in its favour. The said conduct of OP, *prima facie*, appears to be abusive in terms of section 4 (2)(a)(i) of the Act.

10. On the basis of foregoing, the Commission is *prima facie* of the opinion that the conduct of OP 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.
11. In case the DG finds that OP has 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 business of OP.
12. 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.
13. 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.
14. 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: 05/02/2015