



सत्यमेव जयते



COMPETITION COMMISSION OF INDIA

Case No. 88 of 2014

In Re

Sunrise Resident Welfare Association

Flat No. 601, Block 4A, DDA (HIG), Motia Khan, Delhi

Informant

And

Delhi Development Authority (DDA)

Vikas Sadan, INA, New Delhi

Opposite Party No. 1

The Commissioner (Housing), DDA

B-Block, Vikas Sadan, INA, New Delhi

Opposite Party No. 2

The Executive Engineer (Electricity), DDA

Electrical Division-8, Vikas Minar, New Delhi

Opposite Party No. 3

CORAM

Mr. Ashok Chawla

Chairperson

Mr. S. L. Bunker

Member

Mr. Sudhir Mital

Member

Mr. U. C. Nahta

Member

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Appearances:

For Informant:

Shri P. D. Gupta, Advocate
Shri Rituraj Biswas, Advocate
Shri R. K. Seewa, Advocate
Ms. Sujaya Burman, Advocate
Shri V. K. Gupta

For Opposite Party No. 1:

Ms. Anu Monga, Advocate
Shri Rahul Goel, Advocate
Shri Neeraj Lalwani, Advocate

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

1. The present information has been filed by Sunrise Resident Welfare Association (hereinafter, the '**Informant**') under section 19(1)(a) of the Competition Act, 2002 (hereinafter, the '**Act**') against Delhi Development Authority (hereinafter, '**DDA**' / '**OP 1**'); the Commissioner (Housing), DDA (hereinafter, '**OP 2**') and the Executive Engineer (Electricity), DDA (hereinafter, '**OP 3**') alleging, *inter alia*, contravention of the provisions of section 4 of the Act in allotment of flats under 'DDA Housing Scheme 2010' in Delhi.
2. The Informant is stated to be a registered society under Societies Registration Act, 1860 and has been incorporated for proper maintenance and upkeep of common portions and services of flats/ property as has been allotted to its constituent members by DDA. DDA was established under the Delhi Development Act, 1957 with the object to develop Delhi in a planned manner. OP 2 and OP 3 are the officials of DDA.



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3. The Informant has alleged that DDA is enjoying a near monopoly in development of townships, colonies and complexes in Delhi as conferred upon it by the Delhi Development Act, 1957. Relying on the Commission's *prima facie* order under section 26 (1) of the Act dated 11.06.2013 in the case of *Adla Satya Narayan Rao vs. DDA* (case no. 06/2013), the Informant stated that DDA is in a dominant position in the relevant market of provision of service for sale of residential flats in Delhi.
4. It is stated in the information that DDA had floated 'DDA Housing Scheme, 2010' offering 16,000 flats of various sizes in different locations of Delhi. The members of the Informant were allotted flats at Block No. 3 & 4, DDA (HIG) Flats, Motia Khan, New Delhi. It is alleged that after the draw of allotment on 18.04.2011, DDA issued 'Allotment cum Demand Letter' only in last week of March 2012, after almost a year; despite stating in the scheme brochure that the flats were ready for occupation. However, the correct position was that the flats were in final stages of construction even on date of draw and without any basic minimum facilities.
5. The Informant has submitted that when the allottees were handed over possession of the flats, they were shocked to discover the poor quality of construction materials used, lack of proper water supply, insufficient number of electricity points, lack of any lifts despite the fact that the building were 10 storey apartments. Further, the lifts were installed on 24.07.2012 which were not functioning properly because of which many times the residents used to get trapped inside the lifts in between floors. The fire equipments in the buildings were also not functioning properly. The Informant has further pointed out that DDA had offered possession of flats in March, 2012 without even obtaining NOC which was given by Chief Fire Officer vide letter dated 23.07.2013.
6. The Informant has alleged that DDA has abused its dominant position by including one sided provisions in the brochure of the DDA Housing Scheme



2010. Some of the one sided provisions of the offer documents of DDA are as follow:

- (i) Allotment of flat will be automatically cancelled in case payments are not made within the prescribed period by the allottee. No show cause notice shall be issued for the purpose. In both the cases, amount deposited is refundable without any interest. Allottee is liable to make the payment within 90 days from the date of issue of demand letter without interest. The allottee is liable to deposit the amount in not more than next 90 days along with interest @ 15% p.a. compounded as on 31st March. If the payment is not made within 180 days, including interest, from the date of demand letter, allotment of the flat will be automatically cancelled. No show cause notice/ intimation will be given by the DDA for cancellation. No time extension for payment beyond the date of automatic cancellation would be given. Also, no restoration is allowed once the flat is automatically cancelled and on cancellation the amount deposited will be refunded without interest.
- (ii) If the physical possession is still not taken over then the allotment shall be automatically cancelled. No show cause notice shall be served before cancellation. However, in exceptional cases, the physical possession can be given beyond 12 months and up to 24 months on payment of charges in addition to prescribed restoration/ cancellation charges, provided prior permission of DDA is obtained.
- (iii) The property is being offered on “as is where is basis”. The DDA will not entertain any request for additions or alterations or any complaints, whatsoever regarding property circumstances except as defined in para 19 of the Regulation or about cost of flats, its design, the quality of material used, workmanship or any other defect.



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- (iv) All the allotments shall be made on free hold basis. However, the title be transferred only when conveyance deed is executed in favour of the allottee and registered in the office of the Sub-Registrar. The allottee is liable to pay Free Hold charges as given and if such rates are revised, the difference will be claimed from the allottee.
7. Based on the above allegations, the Informant requested the Commission to proceed against DDA under section 27 of the Act and its officials under section 48 of the Act to fix the responsibility of such persons who are found to be in-charge of and responsible for the conduct of its business; to direct DDA to refund the conversion charges collected by it @ Rs.1,17,245/- from each Flats with 15% interest from the date of payment till realization; to direct DDA to place the onetime maintenance fund collected @ Rs.4,89,022/- in a corpus in an escrow account and maintenance should be carried out of the interest earned out of the said corpus as in the case of Clause 12(b) of the DDA Housing Scheme, 2014; to direct DDA to refund the interest charged from each flats as penal interest @ 15% for delayed payment during the period the flats were not ready for possession; and to direct DDA to pay compensation of Rs.5,00,000/- or any other amount which the Commission may deem fit and proper in the facts and circumstances of the case to each of the owner of the flats for substandard construction and workmanship. The Informant also prayed the Commission to grant interim relief by directing DDA to keep in abeyance the implementation of the notices dated 24.08.2014 and 05.11.2014 and to continue to maintain both electrical as well as civil common services operation and maintenance of all electrical installation including lifts and common lightings in Block No. 3 and 4, DDA (HIG), Motia Khan, Delhi-110055 till pendency of this petition.
8. The Commission has perused the documents submitted by the parties and heard their counsels in detail.



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9. From the facts of the case, it appears that the Informant is aggrieved by the abusive conduct of DDA in regards to allotment of flats through 'DDA Housing Scheme, 2010'. As per the Informant, DDA is in a dominant position in the relevant market of provision of service for sale of residential flats in Delhi and it is abusing its dominant position by prescribing unfair and one sided terms and conditions in the brochure of its 'Housing Scheme 2010' which is in contravention of the provisions of section 4 of the Act.
10. DDA in its written submissions dated 23.03.2015 has stated that the information filed by the Informant does not raise any competition law concerns actionable by the Commission and is, thus, not maintainable under the provisions of the Act. According to DDA, the allegations raised by the Informant are patently incorrect and misleading. It is contended that the allegations of the present case are distinct and distinguishable from the earlier case (case no. 06/2013) against DDA before the Commission wherein, in the *prima facie* 26 (1) order, the relevant market was considered as 'the market for the provision of services for sale of residential flats in Delhi'. As per DDA, the relevant market to be considered in the instant case is provision of services for repair and maintenance of residential flats in Delhi and DDA is not a dominant player in the relevant market as various resident welfare associations in Delhi undertake the repair and maintenance services on their own or through private agencies. It is submitted that the allegations of abuse of dominant position by DDA, being baseless and presumptuous, are totally without merits and thus, do not require an investigation.
11. However, the Commission notes that the facts and allegation of the present case is akin to the facts and allegations in case no. 06/2013 (Dr. Adla Satya Narayan Rao vs. DDA) and against the same Opposite Party *i.e.*, DDA. In case no. 06/2013, the Commission took *prima facie* view that DDA is in a dominant position in the relevant market of the provision of services for development and sale of flats in the geographic area of Delhi and the conduct of DDA was found to be abusive in terms of the provisions of section 4 of the Act. Thus, the market of "*the provision*



of service for sale and distribution of residential flats in the territory of Delhi” may be considered as the relevant market in the present case.

12. On the aspect of position of dominance and abusive conduct of DDA, it may be noted that the size and resources of DDA are huge and being the statutory authority as per DDA Act, 1957 the consumers in the relevant market are completely dependent on it and there are no options available in the relevant market where a consumer can look and go for a substitute of the relevant product. Moreover, in case no. 06/2013 the Commission has already taken a *prima facie* view that DDA is in a dominant position in the relevant market as defined *supra* and its conduct in terms of specifying unfair and one sided terms and conditions in the brochure of its Housing Scheme, 2010 are abusive in terms of section 4 of the Act. Provisions in the brochure of its Housing Scheme, 2010 such as payment of interest for late payment and automatic cancellation including penal interest, delay in issuance of allotment cum demand letter, false promise regarding stage of construction of flats, collection of conversion charges, *etc. prima facie* appear to be unfair and therefore abusive in violation of section 4 of the Act.
13. In the light of the above analysis, the Commission finds that a *prima facie* case of contravention of the provisions of section 4 of the Act is made out against DDA in the instant matter and it is a fit case to be investigated by the Director General ('DG'). Accordingly, the Commission directs the DG to cause an investigation into the matter and to complete the investigation within a period of 60 days from receipt of this order.
14. The Commission, however, made it clear that nothing stated herein shall tantamount to an expression of opinion on the merits of the case and the DG shall conduct the investigation without being influenced by any observation made herein.



15. The Secretary is directed to send a copy of this order alongwith the information and the documents filed therewith to the office of DG forthwith.

Sd/-
(Ashok Chawla)
Chairperson

Sd/-
(S. L. Bunker)
Member

Sd/-
(Sudhir Mital)
Member

Sd/-
(U. C. Nahta)
Member

New Delhi

Dated: 23/04/2015