



(Case No. 49 of 2011)

In Re:

South City Group Housing Apartment Owners Association

Informant

And

1. Larsen & Toubro Ltd.

Opposite Party No. 1

2. Shri Dinesh P. Ranka

Opposite Party No. 2

CORAM:

Mr. Ashok Chawla
Chairperson

Mr. Anurag Goel
Member

Dr. Geeta Gouri
Member

Mr. M. L. Tayal
Member

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

Mr. S. L. Bunker
Member

Present: Advocate Mr. Vaibhav Gaggar and Associates on behalf of the Informant,
Advocate Sh. Sameer Parekh and Associates on behalf of the Opposite Party No.
1 and Advocate Sh. Ranjeeta Rohtagi on behalf of the Opposite Party No. 2.



ORDER UNDER SECTION 26(6) OF THE COMPETITION ACT, 2002

1. BACKGROUND

1.1 As per the provisions of Section 19 (1) (a) of the Competition Act, 2002 (hereinafter referred to as “**the Act**”), South City Group Apartment Owners Association (hereinafter referred to as the “**Informant**” or “**SUGRUHA**”) has filed the present information with the Commission on 29.08.2011.

1.2 This information relates to the alleged infringement of the provisions of Section 3 and Section 4 of the Act by Larsen & Toubro Ltd. (hereinafter referred to as “**L&T**” or “**the Opposite Party No. 1**”) and Shri Dinesh P. Ranka (hereinafter referred to as “**the Opposite Party No. 2**”).

2. BRIEF PROFILE OF THE PARTIES

2.1. The Informant is a registered association (under the Karnataka Apartment Ownership Act, 1972) of the owners of apartments in the South City Group Housing Complex (hereinafter referred to as “**South City Complex**”) located at Off Bannerghatta Road, Bangalore, Karnataka. As on 29.08.2011, 890 apartment owners are the members of the Informant Association.

2.2. The Opposite Party No. 1 is a company registered under the Companies Act, 1956 and has been engaged in the business of real estate development and various other construction activities. The Opposite Party No. 2 is a Bangalore based individual and real estate developer and the erstwhile owner of the land on which the South City Complex has been developed.



3. FACTS AND ALLEGATIONS

3.1 As per the information, under a 'Development Agreement' executed on 19.10.1995, the Opposite Party No. 1 and the Opposite Party No. 2 (together hereinafter referred to as "**the Promoters**") have jointly promoted/developed a group housing residential apartment project in the name of 'South City' having more than 2000 apartments in 18 towers at Off Bannerghatta Road in Bangalore, Karnataka.

3.2 The Informant has submitted that the construction of the project was started in 1999 and as per clause 22 of the 'Development Agreement' between the Promoters it was to be completed by 30.04.2002. However, the project was incomplete in many respects till the possession of the apartments was handed over to the apartment owners. Also, several facilities and amenities as promised by the Promoters in the 'Agreement to Sell' had either not yet been provided at all or were inadequate/withdrawn/not in working condition. Without completing the project in all respects, the Promoters managed to get the occupation certificate from the Bangalore Development Authority (hereinafter referred to as "**the BDA**") with a view to making the apartment owners believe that the amenities and facilities were all in place and that the various conditions prescribed by the local authorities were complied with. The Informant has alleged that the delay in construction of the project is a deliberate attempt by the promoters to enrich themselves on the steeply rising real estate market at the cost of the buyers.

3.3 The Informant has submitted that the prospective buyers were lured by the Promoters with the promise that they will get apartments along with an undivided share in the ownership of 34 acres of property, including a park, civic amenities, play areas for children, walking track, club house, swimming pool etc. But, actually the Opposite Party No. 2 had already relinquished about 12 acres of land out of the said 34 acres, sold to the apartment owners, to the BDA.

3.4 As per the Informant, at the time of booking, the Opposite Parties entered into a tripartite 'Agreement to Sell' with the prospective buyers and once all payments towards the costs



of apartments were made and the apartments were ready for handover, 'Sale Deeds' were executed between the Opposite Parties and the apartment owners. It is the case of the Informant that on the days when the 'Sale Deeds' were registered, scores of apartment buyers were asked by the Promoters to come to the sub-registrar's office and were made to sign on the dotted lines of their 'Sale Deeds'. Each buyer signed the 'Sale Deed' trusting the promises and warranties of the promoters that such deed was as per the 'Agreement to Sell'.

3.5 However, later it was found that the Promoters had not provided all the facilities and amenities promised to the buyers in the 'Agreement to Sell' and 'Sale Deed'. The Informant has alleged that the Promoters suppressed the crucial information that the Opposite Party No. 2 had already relinquished about 12 acres of the property, sold to the apartment owners, to the BDA and was claiming absolute ownership and right to convey title without any encumbrances or impediments. Further, as per the Informant, there are some clauses in the 'Sale Deed' which were not in the 'Agreement to Sell' and adverse to the buyers' interest.

3.6 Further, the Informant has alleged that the Promoters made the apartment owners pay unnecessarily high stamp duty on their undivided shares on the entire 34 acres without excluding the 12 acres relinquished to the BDA. Further, the Promoters misled the apartment owners by not providing direct connectivity to the JP Nagar 24th main road as promised, resulting in disputes with neighboring communities. Also, the Promoters have misused their fiduciary role by not forming the apartment owners association and transferring the management of the South City Complex to the Informant Association.

3.7 The Informant has alleged that the maintenance service provider appointed by the Opposite Party No. 1 is not providing satisfactory accounts of the actual maintenance expenses and making arbitrary changes in accounting policies to transfer additional burden to the apartment buyers. The Promoters are refusing to cede control of maintenance service providers to the Informant for improvement of the quality of maintenance services. Further, the Promoters are collecting contingency deposits from



several apartment owners for anticipated sales tax liability for which they have neither given the receipts nor refunded the money.

3.8 As per the Informant, the Opposite Party No. 1, having a turnover of Rs. 51978.5 crores and profit after tax of Rs. 4456.2 crores in 2010-2011, along with the Opposite Party No. 2 is in a dominant position in the market. It has been alleged by the Informant that, being in a dominant position, the above said conducts of the Promoters are abusive in nature and in violation of the provisions of Section 4(1), 4(2) (a) (i) and 4(2) (d) of the Act.

3.9 In its supplementary information dated 26.09.2011, the Informant has stated that there are two distinct markets involved in this case *i.e.* the market for the services of development of apartments and the market for the services of estate management and maintenance. As per the Informant, the Promoters had a monopoly power in the markets for services of real estate management and maintenance and are abusing the same to the detriment of the apartment buyers.

3.10 The Informant has alleged that, by limiting competition and charging high prices for poor quality services, the Promoters have acted in concert which is in contravention of Section 3 (3) (a) and 3 (3) (b) of the Act. It has also been alleged that, by forcing apartment owners to use their estate management services without any service level agreements for more than a decade, the Promoters have contravened the provisions of Section 4 of the Act.

3.11 It has been stated by the Informant that the Promoters have not been maintaining proper accounts to separate expenditure on the project and on maintenance of completed blocks and have refused to provide transparent audited accounts reflecting how the maintenance costs had been arrived at and changing the basis of allocation of total maintenance expenses. As per the Informant, by inflating costs and reducing revenue and by not crediting interest on money collected through sale of parking rights which belonged to the apartment owners, the Promoters have violated the provisions of Section 3 (3) (a) of the Act.



3.12 The Informant has also submitted additional information in support of its allegations on dominant position of the Promoters. As per the Informant, the market share of the Promoters in the relevant market is in excess of 50%; the size and scope of the activities of the Opposite Party No. 1 makes it a dominant player both *vis-à-vis* apartment owners and its competitors. Further, the Opposite Party No. 1 as an engineering giant involved in multiple lines of businesses and its brand name, size and reach amply satisfy the criteria laid down under Section 19(4) (d) and 19(4) (e) of the Act. Also, the Informant has submitted that the consumers are dependent on the Promoters and there exist high switching cost and information asymmetry in the market.

4. RELIEFS SOUGHT BY THE INFORMANT

Based on the above information, the Informant has prayed the Commission for:

- 4.1 Compensation at current market rates (Rs. 25 Crores to Rs. 40 Crores per acre) to the apartment buyers for their respective undivided shares of about 12 acres of land fraudulently sold to them by the Promoters after relinquishing the same to the BDA. Alternately, the Commission may order the Promoters to procure and handover equivalent land adjacent to the South City Complex on its east.
- 4.2 Provide the various amenities promised to the apartment owners like the park, play-areas, jogging track etc., in this piece of land.
- 4.3 Transfer to the Informant all monies collected by the Promoters for allocating reserved parking spaces, along with accumulated interest, as the parking spaces are owned jointly by all apartment owners through undivided share.
- 4.4 Return of balance monies collected by the promoters for payment to civic authorities to individual apartment owners along with accumulated interest.
- 4.5 Handing over of the maintenance corpus intact to the Informant without setting off any dues or transfer of the obligation to collect dues on the date of transfer.



- 4.6 Compensation to apartment owners for the unnecessary additional stamp duty they were made to pay to register their sale deeds.
- 4.7 Cancellation of all such clauses in ‘Agreements to Sell’ and ‘Sale Deeds’ which are the result of the abuse of their dominant position and fiduciary responsibilities of the Promoters as provided under Section 27(d) of the Act.
- 4.8 Compensation to apartment buyers for modifications to the work plans, relinquishment of land to BDA etc. after entering into ‘Agreements to Sell’ and ‘Sale Deeds’ with them, without their explicit concurrence as co-owners.
- 4.9 Compensation to apartment owners for violation of zoning regulations etc., as pointed out in the Lokayukta report. The Promoters should also be ordered to rectify deficiencies and obtain fresh approvals from all statutory authorities.
- 4.10 Order the Promoters to transfer management of the South City Complex to the Informant only, and not to any other body, after due to settlement of accounts.
- 4.11 Return of the money collected by L&T as ‘contingency deposits’ from several apartment buyers to meet anticipated sale tax liability along with interest.
- 4.12 Impose a penalty of 10% of the respective average annual turnover on the developer and the land owner over the last three years as per Section 27(b) of the Act.

5. ORDER UNDER SECTION 26(1) OF THE ACT

The Commission, upon examining all aspects of the case, *vide* its majority order dated 18.01.2012 held that the conduct of the Opposite Parties as highlighted in the information and supplementary information, was indicative of the existence of a *prima facie* contravention of the provisions of the Act and accordingly, directed the Director General (hereinafter referred to as “**the DG**”) to investigate into the matter.



6. The Informant *vide* its letters dated 10.02.2012 and 29.02.2012 had requested the Commission for the grant of following interim reliefs under Section 33 of the Act:
- (i) Order L&T to handover estate management and maintenance to the Informant only with the entire amount of maintenance corpus collected from apartment owners intact, without any deductions.
 - (ii) Order the Promoters to transfer all monies collected for granting parking rights to the Informant with reasonable interest.
 - (iii) Order the Promoters to render accounts and return all the excess money collected from apartment owners along with accumulated interest at reasonable rates. Alternatively, they can credit the same to the maintenance accounts of respective apartments.
 - (iv) Order the Promoters to either provide proof of payment of sales tax or repay all the money collected as ‘contingency deposits’ for anticipated sales tax liability’ with accumulated interest to the respective apartment buyers.
 - (v) Order the Promoters to pay up their share of maintenance expenses for unsold flats with interest.
 - (vi) Declare null and void all provisions in ‘Agreements to Sell’ and ‘Sale Deeds’ which are contrary to law and a result of abuse of their dominance. This includes all clauses in the ‘Sale Deeds’ adverse to the apartment owners, as compared to their respective ‘Agreements to Sell’.
 - (vii) Order the Promoters to immediately stop further construction and desist from seeking further occupancy certificates from municipal authorities, till the Commission disposes of the petition.
7. The Commission considered the request of the Informant for granting interim relief to it under Section 33 of the Act. After hearing the arguments and considering the submissions of the Informant and the Opposite Parties in this regard, the Commission *vide* its order



dated 21.03.2012 rejected the application of the Informant for grant of interim relief under Section 33 of the Act.

8. FINDINGS OF DG INVESTIGATION

8.1 Based on the direction of the Commission under Section 26 (1) of the Act dated 18.01.2012, the DG has conducted investigation into the matter and submitted a detailed investigation report to the Commission on 27.02.2013. The findings of DG investigation are briefly stated below:

Relevant Market

8.2 As per the DG report, there are two relevant product markets to be considered in this case *i.e.*, the market for the services of development of residential apartments and the market for services of estate management and maintenance.

8.3 In regards to the market for the services of development of residential apartments, it has been stated in the DG report that all the residential apartments in the South City Complex are 2, 3 and 4 bedroom apartments in the size range of 760 sq. ft. to 3225 sq. ft. The envisaged amenities in the South City Complex include a club house, landscaped garden, swimming pool, children's play ground, joggers and cycle track, intercom, EPBAX, TV monitoring facilities, lifts, standby generators, overhead and underground tanks, firefighting equipments, dish antenna, security services, etc. These facilities and amenities are generally common in multistoried residential apartment projects of comparable size and scale developed by other developers in Bangalore. Therefore, there being no distinct characteristics making them clearly distinguishable from other residential apartments, either in terms of physical characteristics or in terms of intended end use, the apartments of the South City Complex fall in the class of residential apartments generally developed by various developers in multistoried residential apartment complexes intended for residential use.



8.4 The DG has submitted that the average rates at the time of initial sale of the apartments developed during the last seven years by various developers had ranged between Rs. 1425 per sq. ft. to Rs. 4090 per sq. ft. The DG investigation further revealed that large number of apartments developed by other developers in different locations in Bangalore have been preferred by the buyers over the South City project, which is indicative of the fact that no clearly identifiable consumer preference can be attributed for the South City apartments. There are also no distinguishing features exclusively attributable to the apartments of South City setting them apart and making them not substitutable by other residential apartments in other multistoried residential apartment complexes.

8.5 Accordingly, the DG has considered the “*market of services for the development of residential apartments*” as one of the relevant product markets in the instant case.

8.6 With regards to the second relevant market *i.e.* the market for services of estate management and maintenance, DG has stated that the services of estate management and maintenance (comprise of services such as housekeeping, lawn maintenance, maintenance of lifts, security services, electrical maintenance, plumbing, etc., in the context of real estate sector) are covered within the definition of “service” under Section 2(u) of the Act.

8.7 As per the DG report, there are number of enterprises that are providing the services of estate management and maintenance under a single umbrella to various residential apartment owners associations and to the developers of residential apartments. Besides, several subsidiaries and associate companies of real estate developers are also providing the same services under a single umbrella.

8.8 Further, the services of estate management and maintenance are not limited only to residential apartment segment of the real estate sector as these services are also being availed in commercial establishments like office complexes, malls, hospitality sector (hotels), hospitals etc. Thus, the market of estate management and maintenance services are not entirely dependent upon the residential housing sector. Accordingly, DG has



concluded that the services of estate management and maintenance are distinct and different from the services of development of residential apartments. Thus, the DG has considered “*the market for the services of estate management and maintenance*” as the second relevant product market in the instant case.

8.9 With respect to relevant geographic market, the DG investigation revealed that areas embarked for residential use are spread across Bangalore as several residential apartment projects have been promoted by various real estate developers in different locations in Bangalore. Barring areas specifically earmarked for commercial use, industrial use etc., there are no regulatory barriers for development of residential apartments in such areas which are earmarked for residential use across Bangalore. Accordingly, the DG is of the view that restricting the geographical area to the vicinity of South City, Bangalore on the grounds of regulatory barriers is not appropriate.

8.10 Further, there are no local area specifications for the apartments except that the same have to be as per the approved plans and meet the construction norms. Besides the local language being the same across the city, the cosmopolitan nature of Bangalore makes language considerations irrelevant for further limiting the geographical area within the city. In the matter of consumer preference, the relevant geographic market of residential apartments cannot be confined to any specific area of Bangalore which is representative of the preference of all the consumers.

8.11 As per the DG report, the conditions of competition for supply of goods or provisions of services or demand of goods or services for both product markets are homogenous across Bangalore. Based on the above analysis, the DG considered as “*the area of Bangalore*” as the relevant geographic market in this case.

8.12 Thus, according to the DG report, the relevant markets to be considered for the purpose of investigation are “*the market for the services of development of residential apartments in Bangalore*” and the “*market for services of estate management and maintenance in Bangalore*”.



Dominance of the Opposite Parties in the Relevant Markets

- 8.13 The DG has investigated the dominance of the Opposite Parties with respect to the above two relevant markets separately.
- 8.14 In order to assess the dominance of the Opposite Parties in the relevant market for the services of development of residential apartments in Bangalore, DG has analysed all the factors enumerated under Section 19 (4) of the Act.
- 8.15 Based on the audited Annual Reports for the year 2010-2011 of the Opposite Party No. 1 and seven other major developers operating in the same relevant market (Adarsh Developers, Brigade Enterprises Ltd., Mantri Developers, Nitesh Estates Ltd., Prestige Estates Projects Ltd., Puravankar Projects Ltd., and Sobha Developers Ltd.), it was observed by DG that the annual turnover of the Opposite Party No. 1 pertaining to its real estate business segment was Rs. 250 crores whereas, during the same year, the turnover of the above mentioned seven developers were Rs. 321.19 crores, Rs. 391.36 crores, Rs. 317.92 crores, Rs. 71.13 crores, Rs. 949.67 crores, Rs. 478.36 crores and Rs. 1113.99 crores respectively. However, DG was of the view that the above stated turnover figures of the Opposite Party No. 1 and other developers are not comparable because the turnover figures of other developers are not from only the relevant market. Many of them are engaged in development of commercial properties as well as residential properties outside Bangalore.
- 8.16 In terms of the number of apartments, the market share of the Opposite Party No. 1 (based on the information furnished by the above mentioned seven developers and the Opposite Party No.1 regarding the residential projects executed by them since 2003) in the relevant market works out as less than 12% (2000 apartments out of total 17600 apartments). As per the DG report, in all probability, if all the fully executed and ongoing residential apartment projects of all the developers in Bangalore are to be considered, then the market share of the Opposite Party No. 1 would be less than this.



8.17 Further, in terms of land bank, the market share of the Opposite Parties in the relevant market is not substantial. It has been reported by DG that the Opposite Party No. 1 does not possess any land in terms of ownership or in terms of development rights for residential apartments in Bangalore whereas the Opposite Party No. 2 is the owner of 34 acres (including the relinquished 12 acres) of land pertaining to South City project and another about 8.5 Acres of residential land in Bangalore which is yet to be developed. Thus, as per DG report, the total land bank of the Opposite Parties, including the relinquished 12 acres, works out to 42.5 acres whereas, the above mentioned seven developers (as per their own submissions) have land bank of 695 Acres in Bangalore. Moreover, since 2006, the BDA has approved 100 group housing development plans in city of Bangalore which runs into over 1000 Acres. Thus, it is apparent that land bank of the Opposite Parties as compared to land owned by others for group housing as approved by the BDA is negligible. Therefore, based on the above analysis, DG is of the view that the market share of the Opposite Parties in terms of land bank does not bestow upon them a position of dominance in the relevant market.

8.18 Thus, as per the DG report, based on market share in terms of turnover, number of residential units developed and land bank, the Opposite Parties cannot be said to be as dominant in the relevant market for the services of development of residential apartments in Bangalore.

8.19 According to the DG report, the Opposite Party No. 1 is one of the largest private sector technology, engineering, manufacturing and construction company in the country with 118 subsidiaries, 18 associates and 12 joint venture companies. In terms of size and resources, undoubtedly the Opposite Party No. 1 is a very big enterprise. But, in spite of its size and resources, it has only one project in the relevant market and is not in position to affect its competitors and consumers in its favour and cannot operate independently of the competitive forces in the relevant market. Accordingly, the DG is of the view that the Opposite Party No. 1 cannot be considered as a dominant in the relevant market in terms of size and resources.



8.20 As per DG report, some of the real estate developers in the relevant market are significantly big enterprises in terms of their revenue and profits and they are well established in the relevant market. Their size and presence in the relevant market cannot be undermined and any presumption that the Opposite Parties can operate independent of these enterprises in the relevant market would be incorrect.

8.21 It is observed by the DG that the Opposite Party No. 1 is a very large enterprise as compared to its competitors. Further, construction activity being a major business segment for the company, it is likely that it also enjoys commercial advantages over its competitors. However, while these commercial advantages may enable the Opposite Party No. 1 to garner better profitability for itself, these advantages do not appear to have been used by it at the cost of, or to the detriment of its competitors in the relevant market, as is evidenced by the large number of other developers who have over the years developed numerous residential apartment projects in Bangalore. The Opposite Party No. 1 does not seem to have used its economic power and commercial advantages either by way of expansion of its real estate residential business in the relevant market or in terms of prices of its apartments since South City project has been the only residential apartment project developed by it in Bangalore over the past 12 years. There is also no evidence of any existing players in this sector having been driven out of the market due to the economic power or commercial advantage enjoyed by the Opposite Party No. 1.

8.22 It has also been stated in the DG report that even though the Opposite Party No. 1 is a large conglomerate with vast experience in construction activities and huge resources at its disposal, its presence in Bangalore residential sector is limited only to the South City project and as such the factor of vertical integration in terms of subsidiaries or associates of the Opposite Party No. 1 is not of any consequence in the instant matter.

8.23 It is further stated in the DG report that the consumers cannot be considered to be dependent on the Opposite Party No. 1 merely because of its reputation, expertise, size and resources etc. Since the options are available for alternate comparable residential apartments in the relevant market, the consumers are expected to have duly considered



the alternatives while making an informed decision of booking apartments. This is further evidenced by the fact that large numbers of apartments developed by other developers in Bangalore have found buyers who chose those apartments over the apartments of South City, Bangalore. Thus, as per the DG report consumers are not dependent on the Opposite Parties.

8.24 Further, it has been reported by the DG that the Opposite Party No. 1 does not enjoy a dominant position in the relevant market by virtue of a public sector undertaking. Also, there is no entry barrier in the market because of presence of a large number of players in the relevant geographic market. Thus, it is erroneous to conclude that the choice of South City apartments is a reflection of the lack of countervailing buying power of its apartment owners *vis-a-vis* the Opposite Parties thereby making them dominant.

8.25 Regarding the market structure and size of market, DG investigation revealed that several real estate developers are engaged in the activity of development of residential apartments and though the prospective buyers are dependent on developers for their requirement of dwelling units, however, their choice is not limited to any particular developer. With the constant supply of residential apartments by various developers and the steady demand for the same, the market is constantly growing.

8.26 Therefore, based on the above analysis, it has been concluded in the DG report that the Opposite Parties are not dominant in the relevant market for the services of development of residential apartments in Bangalore.

8.27 The DG has also investigated the issue of dominance of the Opposite Parties in the market for the services of estate management and maintenance. It is revealed from the DG investigation that the Opposite Parties does not directly provide the services of estate management and maintenance rather, the Opposite Party No. 1 has hired an external agency *i.e.*, M/s C.B. Richard Ellis (CBRE), specializing in the field, for the provision of that service in the South City Complex. The DG, therefore, concluded that since the Opposite Parties are not found to be engaged in the business of estate



management and maintenance services, they cannot be considered as dominant in the relevant market in terms of Section 4 of the Act.

Abuse of Dominance Position of the Opposite Parties

8.28 On abuse of dominant position of the Opposite Parties, the DG has concluded that since the Opposite Parties are not in dominant position in either of the relevant markets defined *supra i.e.* the market for the services of development of residential apartments in Bangalore and the market for the services of estate management and maintenance of residential apartments in Bangalore, the allegations of abuse as made out by the Informant do not fall under the purview of Section 4 of the Act. Therefore, as per the DG report none of the provisions of Section 4 of the Act are violated by the Opposite Parties in the instant matter.

Analysis of the Anti-competitive Agreements under Section 3 of the Act

8.29 The DG has examined the agreements entered into by the Opposite Parties with the apartment owners and the agreement entered into by the Opposite Party No. 1 and the C.B. Richard Ellis (CBRE) for the provision of estate management and maintenance services in the South City Complex *vis-à-vis* the provisions of Section 3 of the Act.

8.30 On the alleged anti-competitive agreement between the Informant and the Opposite Parties, the DG has stated that the members of the Informant are consumers and the Opposite Parties are the Promoters of the South City Complex. As per DG report, the Informant and the Opposite Parties cannot be said to be engaged in identical or similar trade of goods or provision of services and as such the agreements between the apartment owners and the Opposite Parties do not come under the ambit of Section 3(3) of the Act. Further, as per the DG findings, the alleged agreement for maintenance services between the Opposite Party No.1 and CBRE does not fall within the ambit of Section 3 (3) of the Act as the Opposite Party No.1 and CBRE cannot be said to be engaged in identical or similar trade of goods or provision of services.



8.31 So far as infraction of the provisions of Section 3 (4) of the Act is concerned, DG has reported that neither the agreement between the apartment owners and the Opposite Parties nor the agreement between the Opposite Party No.1 and CBRE is a vertical agreement, that is, an agreement between enterprises at different levels or stages of production chain qualifying to be covered under the provisions of Section 3(4) of the Act. The Opposite Parties and the apartment owners, based on the activities undertaken by them, cannot be considered as persons or enterprises at different stages or levels of the production chain in different markets in respect of production, supply, distribution, storage, sale or price of, or trade in goods or provision of services as end consumers are not part of a production chain.

8.32 On the agreement between the Opposite Party No.1 and CBRE, the DG has reported that while the former is engaged in the services of development of residential apartments the latter is rendering services of estate management and maintenance. Both are entities operating in different markets. However, the service of development of residential apartments and the service of estate management & maintenance cannot be considered as different levels or stages of same production chain. Because, neither of the two services can be considered as intermediate service for the provision of other service.

8.33 As per the findings of the DG, the mutual agreement between the Opposite Party No. 1 and CBRE does not cause any Appreciable Adverse Effect on Competition in India in as much as the different clauses of the said agreement do not reveal any tie-in arrangement between the parties for providing or producing any additional products/services as a condition to render or obtain the services of estate management and maintenance. The arrangement between the parties is in the nature of a contract and there is no stipulation of tied product/service required to be supplied or procured by the parties as a condition of such agreement. It is also observed by the DG that the agreement entered into between the above parties does not have any foreclosure effect on the market of maintenance services.



8.34 Thus, according to DG findings, no case of anti-competitive agreement under the provisions of Section 3 of the Act is made out against the Opposite Parties in the instant case.

Conclusion of DG Findings

8.35 DG has concluded that the Opposite Parties are not in a position of dominance in any of the relevant markets defined *supra*. Since the Opposite Parties are not in a dominant position in any of the relevant markets, no case of abuse of dominance under the provisions of Section 4 of the Act is made out against them.

8.36 On infraction of the provisions of Section 3 of the Act, it has also been concluded in DG report that the agreements between the apartment owners and the Opposite Parties and the agreement between the Opposite Party No.1 and CBRE are neither a horizontal agreement covered under a provisions of Section 3 (3) of the Act nor a vertical agreement covered under the provisions of Section 3 (4) of the Act. As per DG findings, no case of anti-competitive agreement is made out against the Opposite Parties under the provisions of Section 3 of the Act in this case.

9. OBJECTIONS OF THE INFORMANT TO THE FINDINGS OF DG REPORT

In response to the DG investigation report, the Informant has filed its objections on 04.04.2013 and 03.07.2013. A brief of the objections of the Informant is as follows:

9.1 The Informant has submitted that the DG has not taken on record the crucial, voluminous and painstakingly gathered and collated supporting evidences submitted by it along with related correspondence. The Informant also submitted that the DG has not used its investigating power and failed to make a field visit during the course of investigation.

9.2 Regarding the relevant product market, the Informant is of the view that only the residential apartments available from the year 1999-2005 having similar location, amenities and facilities and falling in almost similar price range would be comparable to



the project/product in question. The DG has also committed a grave error by collecting data from the other builders for the period 2006 to 2012 as the majority of the apartments in the South City Complex were sold by 2005. Therefore, the data for comparison, if any, should have been taken for 1996-2005, the period during which the Opposite Parties received the approvals and sold the bulk of the apartments in the South City Complex as only those luxury multistoried group housing projects having similar amenities and services promoted during this period of 1996-2005 could be considered as substitutes for the apartments in South City Complex.

9.3 The Informant has also submitted that the DG has wrongly recorded that the development of the compared projects commenced from 2003 onwards whereas no details of such projects is given in the DG Report. Most of the projects in Bangalore have commenced during 2006-2012 and hence comparison by DG with these projects or treating them as substitutes is faulty and incorrect. Likewise, the finding of the DG that the rates of the apartments of these projects could be compared with the rates of the South City Complex also falls flat, as the prices of the South City Complex were valid almost five years earlier. Therefore, the details gathered from the other developers during the last 7 years are irrelevant for the present case.

9.4 On consumer preference, the Informant submitted that the DG has perfunctorily negated '*consumer preference*' as one of the factors for determining relevant product market by stating that there are various factors like amenities offered, location, size of the apartments etc., which influence *consumer preference*, which in turn are subjective for each consumer. As per the Informant, it is an undisputed fact that almost 2000 consumers have chosen to purchase apartments in South City based on the representations of the Opposite Party No. 1 of the project being spread over 34 acres of land along with bouquet of amenities/facilities, and away from the hustle of the main city of Bangalore, thereby making South City Complex a separate relevant market in itself.

9.5 Further, as per the Informant, the DG has failed to apply the SSNIP test to consider whether a consumer who wishes to stay away from the hustle of the main city in a large



group housing project with all the amenities and services at his disposal, would shift to an apartment or a villa which does not have the same characteristics/facilities/amenities. Hence, the finding of the DG that the South City Complex cannot said to be possess any clearly identifiable factor(s) which ultimately culminate in consumer preference being restricted to these apartments, does not hold any weight.

9.6 Also, DG has failed to consider, while determining the relevant product market, the admissions by Opposite Party No.1 that there being a separate market/category of premium high rise residential apartments. It is therefore, submitted by the Informant that the analysis of the factors by the DG while determining the relevant product market is itself erroneous and hence the conclusion drawn by DG under this head is wrong and liable to be rejected.

9.7 Regarding the relevant geographic market, the Informant has submitted that the DG has determined the relevant geographic market on the flawed premise and a bald observation that the supply of goods or provisions of services or demand for the same are homogenous all across Bangalore. A closer look at the DG's reasoning shows that the exercise has been done in a perfunctory manner and that the same have been dealt with on the basis of surmises and conjectures. The DG seems to have mixed up the factors of the relevant product market and relevant geographic market while determining the same, as substitutability is a factor to be considered while determining a relevant product market and hence the fact that different developers have been promoting residential apartment complexes in the entire Bangalore is immaterial.

9.8 It is further submitted by the Informant that the DG has erroneously observed that there are no local area specifications as such for the apartments. The DG has neglected all the factors of transport cost, distance of South City Complex from the main city etc., merely on the bald observation that what constitutes a reasonable commute time or distance is highly subjective. Subjectivity cannot be stated to be a premise on which the aforesaid factors can be negated. If at all the said premise ought to have been negated, it had to be done on cogent reasoning and finding. The Informant also submitted that the DG has



curiously brushed aside the factor of consumer preference also on the perfunctory premise that the same is subjective. In view of the above facts, it is submitted by the Informant that the determination of the relevant geographic market as Bangalore by the DG is absolutely flawed and untenable.

9.9 The Informant submitted that when the identification of the said markets *i.e.*, the relevant product and relevant geographic market is flawed and erroneous, the conclusion of the dominant position automatically becomes erroneous. Even otherwise, it is submitted that the Opposite Parties enjoys a dominant position on all parameters mentioned under Section 19(4) of the Act including *inter alia*, market share, size and resources, economic power, dependence of consumers, market structure etc., and has barefacedly abused this dominant position to the detriment of the interest and welfare of the consumers.

9.10 Further, the DG has erroneously dealt with the market share of the Opposite Party No. 1 *vis-a-vis* other independent developers between the period 2006-2011. However, the DG ought to have dealt with the market share of the Opposite Party No. 1 for the relevant period 1996-2006 considering that the bulk of the projects was marketed and constructed during that period.

9.11 The Informant has also submitted that the Opposite Party No. 1 is a well renowned name since 1932 and as per its own website it was among the top 25 Indian Companies during early 1970's. Being a well renowned name in the infrastructure sector, consumers are bound to prefer the Opposite Party No. 1 over any other developer. The brand and market presence of the Opposite Party No. 1 drives the consumer into a safer investment as opposed to taking a risk on the investment with either an unrecognized or non-established builder.

9.12 As per the Informant, despite its allegations regarding relinquishment of the land belonging to the allottees of South City Complex, the DG brushed aside the entire issue by taking a unsustainable view that these issues are emanating from the contract between the Opposite Parties and the buyers and that the same do not fit into any



conduct/practice of Section 3 and 4 of the Act. This stand of the DG is contradictory to the law laid down by the CCI in DLF matters.

9.13 The Informant has stated that the DG failed to appreciate that the Opposite Party No. 1 had reduced the land of 34 acres to 22 acres and in order to induce the public at large into buying the apartments misrepresented that the said project was built on the land area of 34 acres.

9.14 The Informant also submitted that the clause 16 of the 'Agreement to Sell' further reveals that the Opposite Party No. 1 reserves its rights and discretion to dispose off any area of the project exclusive of parking spaces is a self evident incidence of grabbing land belonging to the apartment owners. Thus, the conclusion of the DG that this is not abusive and the Opposite Party No. 1 is not a dominant entity is erroneous.

9.15 According to the Informant, assuming that the relevant market as determined by DG is sustainable, even then the dominance acquired in the present case is after capturing the customers through its false representations in brochures and promotional material and thereafter making them enter into agreements which are in violation of the statutes and contain one-sided and arbitrary clauses which reveal that the Opposite Party No. 1 has abused its market power and dominant position *qua* the consumers, which were captured by it. This conduct of the Opposite Party No. 1 further has appreciable adverse affect on competition. Hence, there has been gross violation of Section 3 and 4 of the Act on the part of the Opposite Party No. 1.

9.16 The Informant has also submitted that the relevant geographic market is the project itself and the same can be concluded from the fact that (i) buyers need the maintenance service for the particular project they stay in and (ii) that maintenance services is required on a secure, regular, safe and reliable basis for the project.

9.17 The Informant has submitted that the DG has not examined the conduct of the parties from the angle of dominance and its abuse. As per the Informant, the Opposite Party No. 1 is a dominant player in the relevant market and has imposed unfair terms and



hence there has been violation of the provisions of Section 4(2)(a)(i) and Section 4(2)(c) of the Act i.e., denial of market access as the buyers have no choice but to accept the services of the maintenance agency appointed by the Opposite Party No. 1 and they are deprived of availing the services of any other maintenance agency.

9.18 Regarding the contravention of Section 3 of the Act, the Informant has submitted that the practices being followed by the Opposite Parties as well as other builders are quite common and anti-competitive. It is a general practice that full disclosure regarding the terms of purchase and details of maintenance services are not made known to the buyers upfront at the time of booking of plots/flats, or even at the time of signing of buyer's agreement.

9.19 Based on the above submission, the Informant has prayed to the Commission to direct the DG for a fresh investigation into the matter.

10. The Opposite Party No. 1, in response to DG report, has submitted to the Commission that the findings of DG investigation may be accepted and the matter may be closed under Section 26(6) of the Act without any further orders.

11. DECISION OF THE COMMISSION

11.1 The Commission has carefully perused the entire material submitted by the Informant, the submissions made by the Opposite Parties and third parties before DG, the investigation report submitted by the DG, objections filed by the Informant in response to DG findings and all other relevant material and evidences available on record. The Commission has also heard the arguments of the learned advocates Mr. Vaibhav Gaggar and Associates on behalf of the Informant, Sh. Sameer Parekh and Associates on behalf of the Opposite Party No. 1 and Ranjeeta Rohtagi on behalf of the Opposite Party No. 2.

11.2 It is observed by the Commission that the present matter pertains to the alleged infringement of the provisions of both Section 3 and Section 4 of the Act. For applicability of the provisions of Section 4 of the Act, the necessary condition is that the



entity(s) in question must qualify to be an enterprise under the provision of Section 2(h) of the Act. It is observed that the Opposite Party No. 1 i.e., L&T is a registered company under the Companies Act, 1956 and has been engaged in various construction activities including development of real estate projects. The activities of the Opposite Party No. 1 are squarely covered under the definition of enterprise as envisaged under Section 2(h) of the Act. The Opposite Party No. 2 is an individual private builder/developer and the owner of the land on which the South City Group Housing Complex has developed and is a co-developer of the project. The activities of the Opposite Party No. 2 are also covered under the definition of enterprise as envisaged under Section 2(h) of the Act. Both the Opposite Parties have jointly developed the housing project under question through a 'Development Agreement' with mutually agreed terms and conditions.

11.3 **Issues for Consideration**

In view of the facts of the case, findings recorded by DG and the contentions raised by the Informant and the Opposite Parties, the Commission feels that the following issues need to be examined in order to arrive at a decision in the matter:

- I. Whether there is any contravention of the provisions of Section 3 of the Act by the Opposite Parties?
- II. Whether the Opposite Parties have contravened the provisions of Section 4 of the Act?

The above issues are discussed below:

11.4 **Determination of Issue No.1**

11.4.1. On the above issue, the Informant has submitted that the Opposite Parties, by entering into anti-competitive agreements with the apartment buyers and with the estate management and maintenance service provider *i.e.*, CBRE; have contravened the provisions of Section 3 (3) and Section 3 (4) of the Act.



11.4.2. Before proceeding to examine the alleged violations, it is necessary to examine the relevant provisions of Section 3 of the Act. The provisions of Section 3(3) of the Act reads as :

“Any agreement entered into between enterprises or associations of enterprises or persons or associations of persons or between any person and enterprise or practice carried on, or decision taken by, any association of enterprises or association of persons, including cartels, engaged in identical or similar trade of goods or provision of services, which.....

- (a) Directly or indirectly determines purchase or sale prices;*
- (b) Limits or controls production, supply, markets, technical development, investment or provision of services;*
- (c) Shares the market or sources of production or provision of services by way of allocation of geographical area of market, or type of goods or services, or number of customers in the market or any other similar way;*
- (d) Directly or indirectly results in bid rigging or collusive bidding, shall be presumed to have an appreciable adverse effect on competition”.*

11.4.3. Section 3(4) of the Act provides that:

“Any agreement amongst enterprises or persons at different stages or levels of the production chain in different markets, in respect of production, supply, distribution, storage, sale or price of, or trade in goods or provision of services, including-

- (a) Tie-in arrangement;*
- (b) Exclusive supply agreement;*
- (c) Exclusive distribution agreement;*
- (d) Refusal to deal;*
- (e) Resale price maintenance,*



shall be an agreement in contravention of sub-section (1) if such agreement causes or is likely to cause an appreciable adverse effect on competition in India”.

11.4.4. A plain reading of the above provisions of the Act reveals that Section 3 (3) prohibits agreements between persons or enterprises engaged in identical or similar trade of goods or provision of service which have anti-competitive effects on competition whereas, Section 3(4) prohibits vertical (enterprises or persons operating at different stages or levels of the same production chain in different markets) agreements which causes or is likely to cause an appreciable adverse effect on competition in India.

11.4.5. The Commission notes that the Opposite Party No. 1 is a developer engaged in the services of development of residential apartments and the Opposite Party No. 2 is the owner of the land and the co-developer and the apartment buyers are the end consumers. It is, thus, evident that agreements between the apartment owners and the Opposite Parties cannot be captured under the ambit of Section 3(3) of the Act as they cannot be said to be engaged in identical or similar trade of goods or provision of services. Similarly the alleged anti-competitive agreement between the Opposite Party No.1 and CBRE for maintenance services cannot be covered under Section 3(3) because the Opposite Party No.1, a real estate developer, and CBRE, an estate management and maintenance service provider, are not engaged in identical or similar trade of goods or provision of services. The Informant has also not been able to refute the findings of the DG on this count.

11.4.6. As regards the applicability of Section 3(4) of the Act is concerned, the Commission notes that the DG has returned the finding that neither the agreement between the apartment owners and the Opposite Parties nor the agreement between the Opposite Party No.1 and CBRE is a vertical agreement under the provisions of Section 3(4) of the Act. It is also noted by the Commission that the Informant has not placed anything to counter the finding of the DG in this regard.



11.4.7. In this context, the Commission observes that for applicability of Section 3 (4) of the Act the enterprises in question must operate at different stages or level of the production chain in different markets in respect of production, supply, distribution, storage, sale or price of, or trade in goods or provisions of services. Looking at the activities of the members of Informant and the Opposite Parties, it becomes amply clear that they are not operating at a vertical level. Moreover, the Commission is of the view that the apartment owners, as the end consumer, are not part of a production or supply chain within the meaning of Section 3(4) of the Act. A similar view has taken by the Commission in a number of cases, viz, Case No. 83/2011 (in the matter of *Shri Praveen Kumar Sodhi and Omaxe Ltd. & others*) and in Case No. 74/2011 (in the matter of *Sh. Ram Niwas Gupta & Ors. and Omaxe Ltd. & others*). As such, in so far as the agreements between apartment owners and the Opposite Parties are concerned, the Commission, in agreement with the DG's findings in this regard, is of the view that such agreements do not qualify for applicability of Section 3(4) of the Act.

11.4.8. Similarly, as regards the agreement between the Opposite Party No. 1 and CBRE, the Commission is of the view that such agreement is also not in the nature of an agreement between enterprises operating at different levels or stages of production chain covered under the provisions of Section 3(4) of the Act. The Commission observes that the services of development of residential apartments and the services of estate management are different services in different markets but they are not part of the same production/supply chain. Thus, the Commission, in agreement with the DG's findings, holds the view that the agreement between the Opposite Party No. 1 and CBRE cannot be covered under the provisions of Section 3 (4) of the Act.

11.4.9. Based on the above discussion, the Commission is of the considered opinion that the Opposite Parties have not contravened any of the provisions of either Section 3 (3) or 3 (4) of the Act. The Commission decides the Issue No.1 accordingly.



11.5 Determination of Issue No.2

Besides the allegation of contravention of the provisions of Section 3 of the Act as determined above, the Informant has also alleged infringement of the provisions of Section 4 of the Act by the Opposite Parties, which prohibits abuse of dominant position by an enterprise in the relevant market. The determination of this issue involves delineation of relevant market(s), the assessment of dominance of the Opposite Parties and abuse of dominance, if any, in violation of Section 4 of the Act.

Relevant Market

- 11.5.1. In order to ascertain the position of dominance of an enterprise or group the relevant market in terms of Section 2(r) of the Act needs to be determined. The relevant market is to be determined with reference to the relevant product market under Section 2(t) of the Act and the relevant geographic market under Section 2(s) having regard to the factors provided in Section 19(6) and Section 19(7) of the Act.
- 11.5.2. The Informant has submitted that there exist two distinct relevant product markets in the case *i.e.*, (i) the market for the service of developing apartments in the relevant geographic and product market category, culminating with the choice of the apartment by the apartment buyer as evidenced by execution of the ‘Agreement to Sell’ and ‘Sale Deed’ and (ii) the market for the service of estate management and maintenance.
- 11.5.3. The Commission notes that the DG in his investigation report has also identified two relevant product markets *i.e.*, (i) the market for the services of development of residential apartments, and (ii) the market for the services of estate management and maintenance.
- 11.5.4. DG investigation has disagreed with the definition of the first relevant product market given by the Informant that the relevant product market should be restricted to the South City Complex only. As per the DG report, there are no distinct characteristics



attributable to the apartments of South City Complex making them clearly distinguishable from other residential apartments, either in terms of physical characteristics or intended end use. The apartments of South City Complex fall in the class of residential apartments generally developed by various developers in multistoried residential apartment complexes intended for residential use. In terms of price also the apartments in South City Complex are comparable to the large number of apartment projects developed by other developers. DG investigation also found that there is no clearly identifiable consumer preference for the apartments in South City Complex as the amenities and facilities provided in the South City Complex are also provided by other developers.

11.5.5. In regards to the relevant geographic market, the Informant has submitted that the area of South City project is the relevant geographic market to be considered in the instant case. On the contrary, the DG investigation holds that the area of Bangalore is the relevant geographic market. As per the DG report, the condition of competition from the demand as well as supply side is distinctly homogenous across Bangalore and there are no regulatory barriers for the development of residential apartments in the areas which are earmarked for residential use across Bangalore and there is no local area specification for the development of the apartments. As per DG report, there are also no specific local specification requirements or national procurement policies which specify the services or limit provision of such services to any specific geographical area within Bangalore.

11.5.6. The Commission is of the view that the contention of the Informant is unacceptable because the relevant product and relevant geographic market cannot be restricted to one particular project unless there are compelling reasons to do so. While defining the relevant product and relevant geographic market it is necessary to take into account the prevailing competitive forces in the market by considering the factors enumerated under Section 19 (6) and 19 (7) of the Act. It is observed that besides the Opposite Parties the services of development of residential apartments are being rendered by



numerous service providers in various residential apartment projects located in different regions of Bangalore and these services providers are not restrained by any regulatory or trade barriers which limit or restrict these services to any specific geographical area of Bangalore. Also there are no good reasons to take a view that the particular project has such special features which compelled the consumers to seek it as their first choice. The attempt on the part of the Informant to draw parallel with the decision of the Commission in the DLF case in support of its contention that relevant product and geographic market should be restricted to the South City Complex, to say the least, is wholly misconceived. In that case also the market was not restricted to any particular project of the DLF and its dominance was assessed in the entire territory of Gurgaon. The Commission notes that the Informant has not been able to supply any cogent reasons to restrict the relevant market to the South City Complex. On the other hand the DG has determined the market after analysing relevant factors enlisted in Section 19 of the Act. Thus, the Commission, in consonance with the DG findings, holds that “*the provision of services for development of residential units in Bangalore*” is the relevant market.

11.5.7. With regards to the existence of a separate market for the provision of services of estate management and maintenance, the Commission agrees with the findings and observations of the DG report that the market for “*the services of estate management and maintenance*” is a separate relevant market to be considered in this case.

11.5.8. Thus, in view of the Commission, there exist two relevant markets in this case *i.e.*, the market for “*the provision of services for development of residential units in Bangalore*” and the market for “*the services of estate management and maintenance in Bangalore*”.

11.6 **Dominant Position of the Opposite Parties in the Relevant Market**

11.5.9. Citing the market share of more than 50% of the relevant market, huge size and scope of activities, multiple lines of operations and the brand name of the Opposite Party



- No. 1, the Informant has submitted that the Opposite Party No. 1 alongwith the Opposite Party No. 2 enjoys dominant position in the relevant market. .
- 11.6.1. The position of dominance of the Opposite Parties has to be determined in accordance with all or any of the factors of Section 19(4) of the Act. While determining the dominant position, along with the factors given in Section 19 (4), the conduct of the enterprises in question in the relevant market *vis-à-vis* its competitors and consumers has to be considered.
- 11.6.2. DG, having analyzed the factors provided in Section 19 (4) of the Act, has concluded that the Opposite Parties do not enjoy the position of dominance in both the relevant markets defined above. As per the DG investigation, based on the market share in terms of turnover, number of residential units developed and land bank, the Opposite Parties cannot be considered dominant in the relevant market. DG findings reveal that even though the size and resources of the Opposite Party No.1 is large, it has only one project in the relevant market and therefore it is not in position to affect it competitors and consumers in its favour and cannot operate independently of the competitive forces in the relevant market. Compared to the Opposite Parties, other big developers are also present in the relevant market. DG investigation has also revealed that there is no entry barrier in the market. DG has also examined other factors such as dependence of the consumers on the Opposite Parties, market structure and size of the Opposite Parties and found that there are many players operating in the market and offering apartments which are comparable, in terms of amenities and facilities, to the apartments of South City. Because of availability of substitutes in the market, consumers are not dependent upon the Opposite Parties.
- 11.6.3. On the issue of dominance of the Opposite Parties in the relevant markets, the Commission observes that even though the Opposite Party No. 1 is a big name in technology, engineering, construction and manufacturing activities, its presence in the development of residential units is minimal. It is revealed from the DG investigation that South City is the only project of the Opposite Parties in Bangalore. On the



contrary, many other developers who are operating in an around Bangalore have many residential housing projects. Further, in terms of number of residential units the market share of the Opposite Party No.1 has been found to be less than 12% and total land bank (42.5 acres) of both the Opposite Parties is negligible *vis-à-vis* the areas of housing projects approved by BDA (1000 acres). It is also borne out from the investigation that if the total number of projects, fully executed as well as ongoing, of all the developers in Bangalore were considered, the share of the Opposite Party No. 1 would decline even further. It is also revealed from the DG investigation that the Opposite Party No. 1 has not expanded its reach in terms of development of residential projects since last 12 years. As far as dominance of the Opposite Party No. 2 in the relevant market is concerned it is observed that he is an individual private builder operating in Bangalore. The market share, size of resources and scale of operation of the Opposite Party No. 2 cannot be even said to be comparable with the other large builders operating in the city. His name does not figure in the list of reputed and established developers having large number of projects in the city of Bangalore. The Informant has also not provided any material which could lead to any contrary conclusion in this regard. Further, the DG investigation has also found that the Opposite Parties have not acted in any manner to the detriment of the competitors in the relevant market. The Commission is of the view that the above findings of DG in regards to dominance of the Opposite Parties in the relevant market of the provision of services for development of residential units in Bangalore appear to be based on sound analysis and hence correct. The Informant has filed its objections but has not produced any reliable material to make the Commission take a contrary view. Therefore, the Commission holds the view that the Opposite Parties are not in a dominant position in the relevant market of the “*services for development of residential units in Bangalore*” as per explanation (a) to Section 4 read with Section 19(4) of the Act.

- 11.6.4. The contention raised by the Informant that the period (2006-2011) taken by the DG for assessment of dominance of Opposite Parties is flawed and the relevant period



should have been from 1996 to 2006 is devoid of any merit and liable to be rejected. The assessment of dominance and abuse has to be undertaken post the period when the relevant provisions were notified. Even if any enterprise used to hold dominant position in a period prior to date of enforcement provisions coming into being, it will not bring it within the ambit of the Act if it no longer holds that position after the date of enforcement.

11.6.5. The DG has reported that the Opposite Parties are not engaged in the business of estate management and maintenance services. It is observed by DG that the services of estate management and maintenance in South City, Bangalore are rendered by C.B. Richards Ellis, an agency appointed by the Opposite Party No. 1 and there are many such service providers operating in Bangalore. Further, the Opposite Parties are not in the business of the provision of estate management and maintenance services.

11.6.6. In this regard, the Commission is of the opinion that since the Opposite Parties are not found to be engaged in the business of estate management and maintenance services they cannot be considered as dominant in the relevant market of the “*provision of estate management and maintenance services*” in terms of Section 4 of the Act.

11.7 Abuse of Dominant Position by the Opposite Parties

11.7.1. The Commission, in agreement with the DG findings in this regard, is of the view that since no Opposite Party has been found dominant in either of the relevant markets identified, *i.e.* the market for the “*provision of services for development of residential units in Bangalore*” and the market for the “*services of estate management and maintenance in Bangalore*”, the allegations of infraction of the provisions of Section 4 of the Act by the Opposite Parties are not substantiated. Issue No. 2 is decided accordingly.

11.8 Based on the above discussion, the Commission is of the considered view that since there exists no anti-competitive agreement between the enterprises in the present case,



no case is made out against the Opposite Parties under the provisions of either Section 3 (3) or Section 3 (4) of the Act. The Commission is also of the opinion that the Opposite Parties are not in a dominant position in either of the relevant markets defined in the preceding paragraphs. Since the Opposite Parties are not in a dominant position in any of the relevant markets, the question of abuse of dominant position does not arise. The Commission is, therefore, of the view that none of the provisions of Section 4 of the Act are violated by the Opposite Parties in the present matter.

12. Since no case is made out against the Opposite Parties, either under the provisions of Section 3 or Section 4 of the Act, the matter relating to this information is disposed off accordingly and the proceedings are closed forthwith.
13. The Secretary is directed to communicate this order of the Commission to the Informant and the Opposite Parties accordingly as per the relevant regulations.

New Delhi

Date: 23/10/2013

Sd/-

(Ashok Chawla)
Chairperson

Sd/-

(Anurag Goel)
Member

Sd/-

(M. L. Tayal)
Member



Sd-
(Justice (Retd.) S. N. Dhingra)
Member

Sd/-
(S. L. Bunker)
Member