



**COMPETITION COMMISSION OF INDIA**

**Case No. 73 of 2014**

**In Re:**

**Amit Mittal  
BD-57, Vishakha Enclave  
Pitampura  
New Delhi -110088.**

**Informant**

**And**

**DLF Limited  
Shopping Mall, 3<sup>rd</sup> Floor  
Arjun Marg, Phase-I, DLF City  
Gurgaon - 122002.**

**Opposite Party No. 1**

**DLF New Gurgaon Home Developers Pvt. Limited  
1-E, Jhandewalan Extension  
New Delhi – 110055**

**Opposite Party No. 2**

**CORAM**

**Mr. Sudhir Mital  
Chairperson**

**Mr. Augustine Peter  
Member**

**Mr. U. C. Nahta  
Member**

**Justice G. P. Mittal  
Member**



**Appearances:**

<i>For Informant</i>	None
<i>For OP-1</i>	Mr. Ramji Srinivasan, Senior Advocate Ms. Manika Brar, Advocate Ms. Chandni Anand, Advocate Ms. Aishwarya, Advocate Ms. Poonam Madan, DLF Legal Head
<i>For OP-2</i>	Mr. Ramji Srinivasan, Senior Advocate Mr. Anjali Kumar, Advocate Mr. Rohan Arora, Associate, DLF Ms. Poonam Madan, DLF Legal Head

**Order under Section 26(6) of the Competition Act, 2002**

1. The present information was filed under Section 19(1)(a) of the Competition Act, 2002 (**Act**) by Shri Amit Mittal (**Informant**) against DLF Limited (**OP-1**) and DLF New Gurgaon Home Developers Pvt. Ltd. (**OP-2**) (Hereinafter OP-1 and OP-2 together referred to as the **OP Group/OP**) alleging contravention of the provisions of Section 4 of the Act.
2. The Informant in the present case is an individual, engaged in the business of manufacturing Pharmaceutical Duplex Board printed packaging. OP-1 is a public limited company involved in the business of development of residential, commercial and retail properties. The project under reference was launched by DLF Home Developers Limited (**DHDL**), a wholly owned subsidiary of OP-1. Pursuant to the scheme of amalgamation/ merger duly approved by the High Court of Delhi *vide* its order dated 31.07.2013, DHDL amalgamated with OP-2.
3. As per the information, the OP group launched a residential township by the name of 'Regal Gardens' in Sector 90, DLF Garden City, Gurgaon



consisting of 3BHK and 4BHK apartment units having floor area ranging between 1693 to 2215 square feet. The Informant applied for the allotment of an apartment in the said project and paid 10% of the sale price of the apartment and parking space amounting to Rs. 8,59,850/- as the booking amount. Thereafter, buyer's agreement (**the Agreement**) was executed between the Informant and OP-2 on 01.09.2012 and Apartment bearing No. 4, Floor No. 15, Block D in the said project of OP-2 was allotted to the Informant.

4. The Informant alleged that the Agreement was non-negotiable and had to be executed by the Informant within 30 days, failing which the booking amount was liable to be forfeited without any notice to the Informant. Apart from this, several clauses of the 'Agreement' were violative of provisions of Section 4(2)(a)(i) of the Act, being highly unfair and discriminatory towards the allottee and heavily biased towards OP-2. Some of the clauses alleged to be anti-competitive were:
  - i. *Clause 1.1* under which the Informant was required to pay Rs 4,00,000/- towards exclusive use of covered parking space, irrespective of whether the allottee owned a car or not.
  - ii. *Clause 1.2* of the agreement which provided that if the cost of materials used in construction and/or labour charges increased, then the price of the apartment would also be escalated by OP-2.
  - iii. *Clause 1.3* required the allottee to pay the External Development Charges (EDC) and any increase in EDC by the Government of Haryana on pro-rata basis. This clause provided that the unpaid EDC would be treated as unpaid sale price of apartment and in case of non-payment OP-2 was empowered to cancel the agreement and forfeit the booking amount and other non-refundable amount.



- iv. *Clause 1.5* of the agreement provided for a rebate in case of early payment but the discretion to grant the rebate and methodology of calculation of such rebate was at the sole discretion of OP-2.
- v. *Clause 1.9* of the agreement provided that in case of any change in preferential location of the apartment due to change in layout plan, OP-2 could adjust the said amount in the next instalment payable and the allottee had 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 amount to OP-2 in the manner as demanded by OP-2.
- vi. *Clause 1.10* provided that in addition to the total price the allottee was also required to mandatorily pay Rs. 2,50,000/- for recreational club facility as provided by OP-2. Additionally, the allottee was also required to pay membership fees, annual club charges and refundable security deposit for the club facility.
- vii. *Clause 1.16* provided that a discretion was given to OP-2 or related concerns to enter into arrangement for generating and/or supplying electricity to the project for which tariffs should be decided by OP-2 and the allottee would have no right to raise any dispute.
- viii. *Clause 9* of the agreement provided that the building plans and layout plans including additions in apartment floor plans, building plans, specifications, *etc.* may be changed at the discretion of OP-2.
- ix. *Clause 11(a)* of the agreement mandated OP-2 to complete the construction of the building/apartment within 42 months of the application (subject to several exceptions) but did not subject OP-2



to any liabilities for non-compliance or for not honouring the timelines set out in the agreement.

- x. *Clause 11(b)* empowered OP-2 to suspend construction upon Force Majeure conditions and for which the allottee had no right to claim compensation of any nature.
  - xi. *Clause 14* provided that if OP-2 failed to deliver possession after 42 months the allottee could give notice of termination within 90 days of expiry of 42 months. Thereafter, OP-2 would be at a liberty to sell the apartment on terms and conditions as it may deem fit and the allottee would be allowed refund of amounts paid by him after the sale by OP-2 materializes but will not be entitled to any interest. Thus, this clause in effect gave no option for termination to the allottee in the event of force majeure.
5. Upon consideration of the facts and circumstances of the case, the Commission found the OP group to be dominant in the relevant market of “*provision of services for development and sale of residential units in Gurgaon*” and observed that *prima facie* the conduct of the OP group was abusive and in contravention of provisions of Section 4 of the Act. Thus, the matter was referred to Director General (DG) for investigation under Section 26(1) of the Act *vide* order dated 04.02.2015. The Investigation Report was submitted by the DG on 21.03.2016.
6. In the Investigation Report, the DG had defined the relevant market for purposes of analysis of dominance as market for “*the provision of services for development/ sale of residential units (apartments/ flats/ independent floors/ villas) under the licensed category of Residential Group Housing (RGH) and Residential Plotted Land (RPL) in Gurgaon*”.



7. However, upon consideration of the Investigation Report, the Commission observed that while defining the relevant product market the DG had included the residential units developed under RGH and RPL licence in the same category even though they comprised of different types of properties, such as apartments/ flats, plots and villas. The DG had not confined itself to that category of property which was the subject matter of the case *i.e.* an apartment/ flat. The Commission was of the opinion that the provision of the services for development and sale of residential villas/ plots was distinct from the provision of the services for development and sale of residential units/ apartments in terms of the end use. While villas are large luxurious houses having their own garden, pool, *etc.* and are more private; residential plots allow buyers to decide as per their own discretion the floor plan, number of floors, structure, and other specifics of the dwelling unit subject to applicable regulations; apartments/ flats designed and developed as a building by developers are low on privacy compared to villas/ plots and do not give discretion to a consumer to decide on floor plan *etc.* who can only choose the unit according to the floor area, price and facilities built into a project by the developer and independent floors combine the convenience of residential unit being developed by a developer and the privacy of a villa/plot. Thus, from consumers' perspective, a residential apartment would not be substitutable with a villa or a plot or independent floor. Hence, it was observed that apartments/ villas/ plots /independent floors cannot be considered in the same category as done by the DG. Therefore, the relevant market was defined as the market for the '*provision of services for development and sale of residential apartments/ flats in Gurgaon*' and the DG was directed *vide* order dated 09.11.2016 to conduct further investigation under Regulation 20(6) of the Competition Commission of India (General) Regulations, 2009 and submit a Supplementary Report. The DG submitted the Supplementary Investigation Report on 11.08.2017.



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**DG's findings in Supplementary Investigation:**

8. In view of the Commission's order dated 09.11.2016, the DG identified the following issue for supplementary investigation: 'Whether OP group is dominant as per the provisions of the Competition Act, 2002 or not, in the revised relevant market as defined by the Commission'.
9. The DG examined the above issue for the years 2011-12 to 2014-15. It was noted that the project in question, 'Regal Gardens' in Sector 90, DLF Garden City, Gurgaon, was launched on 01.03.2012 (*i.e.* in financial year 2011-12). The Informant booked the residential apartment on 03.03.2012 in the said project and executed the buyer's agreement on 01.09.2012 (*i.e.* in financial year 2012-13). The execution of agreements of the project in question was started on 16.05.2012 and more than 80% of the level of execution of agreements was achieved during the financial year 2014-15. Hence, the relevant scope/ period of investigation for the assessment of dominance of OP group based on the residential units launched and sold was considered as 2011-12 to 2014-15 (*i.e.* 4 years).
10. The DG, while assessing the dominance of OP in the relevant market, took into consideration factors such as the market shares of OP and other developers, size and resources of the enterprise, economic power of the enterprise including commercial advantage over other competitors, dependence of consumers on the enterprise, *etc.*:

*i.* **Market Share:**

The DG examined the market shares of the OP group in the relevant market suggested by the Commission on the basis of the residential licenses granted by Director General, Town and Country Planning, Haryana (**DGTCP**) to various developers, residential apartments/ flats launched by OP and other developers, total residential apartments/ flats sold during the relevant period by OP and other developers, sale value



of residential apartments/ flats, per unit average sale price of the residential apartments/ flats and the status of inventory of OP and other developers:

- a) *Licensed land bank:* The DG analysed the data on licensed land bank obtained from DGTCP relating to whole residential sector *i.e.* RGH and RPL during the period 2007-08 to 2011-12 and observed that there were about 96 developers who had obtained licenses for a cumulative total land of 5,549.38 acres for their residential projects. It was noted that top ten developers had obtained licenses for a total land of 3496.03 acres, which constituted 63% of the total licensed land during the relevant period. Out of the cumulative total licensed land of 5,549.38 acres, the highest market share was registered at 8.84% (490.49 acres) of Emaar MGF Land Ltd. (**Emaar MGF**), followed by Vatika Ltd. (**Vatika**), DLF *i.e.* OP group, Ireo Pvt. Ltd. (**Ireo**) group, and Unitech Ltd. (**Unitech**) with market shares of 8.56% (475.04 acres), 8.3% (460.81 acres), 7.68% (426.22 acres) and 7.30% (405.12 acres) respectively for the cumulative period of 2007-08 to 2011-12.
- b) *Launched residential apartments/ flats:* Further, the DG examined the number of launched residential apartments/flats in Gurgaon in the relevant period *i.e.* 2011-12 to 2014-15 and found that there were about 30 developers who had launched 39,061 saleable residential apartments/flats. It was noted that the highest share was that of Supertech Ltd. (**Supertech**) group *i.e.* 8.95%, followed by the OP group with 8.93%, M3M India (P) Ltd. (**M3M**) with 7.38%, Ireo with 6.55% and Vatika with 6.08% share respectively, for the cumulative period of 2011-12 to 2014-





15. Further, it was noted that the top position was occupied by a different developer in each financial year.

- c) *Number of residential apartments/ flats sold (unit-wise):* With respect to the total number of residential apartments/ flats sold (unit-wise) during the relevant period as per the actual data submitted by the concerned developers, the DG found that there were about 39 developers who sold a cumulative total of 31,913 residential apartments/ flats of which approximately 50% were sold by top ten developers, Though each year top position was occupied by different developer, it was found that during the cumulative relevant period of 2011-12 to 2014-15, OP group had the highest market share of 8.38%, followed by Emaar MGF with 6.34%. The difference between the top two developers during the entire relevant period was 652 residential apartments/ flats. The other competitors up to 5<sup>th</sup> position were Ireo, Vatika, and Ansal Housing and Construction Ltd. (**Ansal Housing and Construction**) whose market shares were 6.09%, 5.11% and 4.58% respectively for the cumulative period of 2011-12 to 2014-15.
- d) *Number of residential apartments/ flats sold (value-wise):* In terms of sale of residential apartments/ flats value-wise, the DG observed that during the relevant period *i.e.* from 2011-2012 to 2014-15 there were about 39 developers who sold residential apartments/ flats of cumulative total worth of Rs. 45,262.07 crore of which approx. 59% (Rs. 26, 909.82 crore) was held by top ten developers. The OP group was at the top position in terms of total sales value of residential apartments/ flats sold in the relevant market during the relevant period. The total sales of the OP group in terms of value was Rs.7,874 crore (17.40%)



followed by Ireo with Rs. 4,669 crore (10.32%). The other competitors up to 5<sup>th</sup> position were M3M, Emaar MGF and Vatika whose total sales were Rs. 2870.77 crore (6.34%), Rs. 2463 crore (5.44%) and Rs. 1931.10 crore (4.27%) respectively.

- e) *Per Unit Average sale price per apartment/flat:* As far as the per unit average sale price, per residential apartment/ flat during the cumulative relevant period of 2011-12 to 2014-15 was concerned, the DG found that the highest per unit average sale price was of Ambience Pvt. Ltd. *i.e.* Rs. 8.70 crore whereas the OP group's per unit average sale price was Rs. 2.94 crore which ranked 5<sup>th</sup>. The 2<sup>nd</sup> position was occupied by Pioneer Urban Land and Infrastructure Ltd. with per unit average sale price at the rate of Rs.4.77 crore, 3<sup>rd</sup> position by Parsvnath Developers Ltd. with per unit average sale price at the rate of Rs.3.75 crore, and 4<sup>th</sup> position was occupied by Tata Housing Development Company Ltd. with per unit average sale price at the rate of Rs. 3.00 crore. The average sale price per residential apartment/ flat of top ten developers in the relevant market during the relevant period stood at Rs. 3.22 crore. The DG has noted that the price of the apartment of the Informant, which was purchased from OP group, was Rs. 86 lakh only.
- f) *Inventory:* The DG took note of the data collected from developers regarding the status of inventory, *i.e.* the residential apartments/ flats, which were launched and not sold as on 31.03.2011. In the beginning of the relevant period *i.e.* 2011-12 as on 31.03.2011, the total inventory available for sale was 11,245 units. With the launch of cumulative total of 39,061 residential apartments/ flats during the relevant period, the total available residential apartments/ flats for sale were 50,306 units.



It was observed from the data collected from 29 developers that Ireo Private Limited, having 1248 unsold units, occupied the top position followed by Vatika with 1120 units and Emaar MGF with 1106 unsold units. The OP group stood at 16<sup>th</sup> position with 269 unsold units.

The DG while concluding the analysis of data submitted by the developers observed that the market share in the range of 8 to 9% in a fragmented market where there are a number of players, no developer including the OP group can be said to be a dominant player in the relevant market in the relevant period.

ii. **Size and resources of the enterprise:**

To ascertain the size and resources of the OP group and other developers *i.e.* top three developers in terms of licensed land bank, launches, sales (unit-wise and value-wise), the DG has done a comparative analysis of various financial parameters namely total and current assets and liabilities, total revenue, net income, reserve and surplus, net working capital and return on assets for the relevant period of 2011-12 to 2014-15. On comparing the size and resources of the OP group with its closest competitors, the DG found that the OP group had an edge over its competitors. The OP group had strong financial strength with the highest amount of current assets and current liabilities in the consecutive period from 2011-12 to 2014-15. Also, the net income and assets of the OP group were much higher than its competitors. Further, there was a persistent increase in reserve and surplus of the OP group during the relevant period. Hence, the DG concluded that from overall assessment of the entire OP group's financial data, it emerged that the OP group had a stronger position compared to other developers in the relevant market in the relevant period.



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iii. **Size and importance of the competitors:**

The DG found that the main/ closest competitors of the OP group in the relevant market during the relevant period were Vatika, Supertech, Emaar MGF, Ireo, M3M and Ansal Housing and Construction and Tata Housing and Development Company Ltd. The market shares of these developers were very close to that of the OP group in each year of the relevant period.

iv. **Economic power of enterprise including commercial advantage over competitors:**

The DG has noted that the OP group was incorporated in 1946 and ever since it has been active in the field of real estate operations. Having such a long business developmental journey, the OP group has an advantage over its competitors. Further, the OP group being one of the first developers to enter into real estate business in the relevant geographical market, has the first mover advantage, which makes it a brand that the consumers are well acquainted with. However, post 2010-11 the market of residential properties for sale has witnessed the entry of many new as well as established players, which has affected the market share of the OP group as compared to the period prior to 2010-11. Several prominent players including Tata Housing and Development Company Ltd. (belonging to the TATA group) and Godrej Properties Ltd. (belonging to Godrej group) have entered the relevant market during the relevant period. Though these are relatively new entrants in the relevant market, they enjoy the benefit of their respective group's brand value as well as their strong financials. Thus, the DG has found that even though the OP group enjoys sound financial strength as compared to its competitors, the same does not enable it to act independently of



competitive forces prevailing in the relevant market during the relevant period.

v. **Dependence of consumers:**

Based on the data regarding launch of similar projects as that of the OP group during 2011-12, the DG has observed that the Informant and other consumers had several choices of residential apartments/ flats available with them, as many projects were launched by established/ major developers during the relevant period. In fact, the number as well as comparative position of various developers in selling residential apartments/ flats during 2011-12 to 2014-15 witnessed significant change. During this period, none of the developers could retain the top position on a year on year basis. Further, the position of the OP group also came down to 6<sup>th</sup> in the year 2014-15. It was noted by the DG that the Informant had chosen to purchase the apartment for his own personal use from the OP group despite the availability of similar apartments/flats in the same relevant market available at lesser rates in the same locality.

vi. **Entry barriers:**

The DG has not found any entry barrier in the relevant market as many developers entered the market during the said relevant period. However, the DG has noted that the real estate sector is a capital intensive sector with a long gestation period. Hence, the necessity of large capital and resources required for entry into the market might be a challenge for the new developer, particularly when it is seen in context of established players with long exposure and experience in the sector, but at the same time the new entrants get some benefits also viz. better infrastructure facility/ ready to use/developed/semi-developed internal roads, availability of power etc. due to the efforts of existing/ old developers.



सत्यमेव जयते



11. The DG after considering all the factors mentioned above observed that the extent to which the OP group could operate independently of competitive forces or affect its competitors or consumers in the relevant market of “*the provision of services of development and sale of residential apartments/flats in Gurgaon*”, in the relevant period was insignificant. Therefore, in view of the above discussion, DG concluded that although the OP group occupied top positions when weighed against some factors, it could not be inferred that the OP group had the market power/dominance in the relevant market during the relevant period in terms of Section 4 read with Section 19(4) of the Act.

**Consideration of the Investigation Report by the Commission:**

12. The Commission considered the Investigation Report and the Supplementary Investigation Report of the DG on 31.05.2018 and decided to forward the same to the parties for filing their suggestions/ objections thereto. OPs were heard on 17.07.2018. However, none appeared for the Informant on the date of hearing.

**Submission of the OP Group:**

13. The OP group in its submission dated 10.07.2018 placed reliance on the findings of the DG in the Supplementary Investigation Report that the OP group does not enjoy a dominant position in the relevant market and stated that the OP Group lacked the ability to affect the: (i) competitors; (ii) consumers; or (iii) relevant market in its favour.

14. The OP group stated that the data submitted by it as well as the data pertaining to the market share of different developers under various aspects (licenses, launches, sales *etc.*) collected, analysed and concluded by the DG, shows that the market is highly competitive and fragmented. In this regard, the OP group has submitted that the Herfindahl-Hirschman Index (HHI) for



the residential apartments launched during 2011-2014 in Gurgaon was 175.12, which reveals that the market is not concentrated.

15. Further, with respect to the relevant market delineated by the Commission, the OP group contended that the relevant product market ought to have been defined to include the resale / secondary market in which numerous apartments/flats are available at competitive prices and the relevant geographic market also ought to be defined so as to extend to all of the National Capital Region (NCR).
16. Furthermore, the OP group has averred that the allegations raised by the Informant in the instant case are at best alleged contractual or commercial disputes within the purview of civil courts, or consumer redressal forums, and do not merit examination under the competition law. Moreover, in previous matters relating to real estate, it has been held that contractual breaches do not ordinarily give rise to a competition law issue which require intervention by the Commission.

**Analysis:**

17. The Commission has perused the materials available on record including the Investigation Report and Supplementary Investigation Report of the DG as well as the reply filed by the OP group. Also, the Commission has heard the arguments advanced by the learned counsel appearing on behalf of the OP group.
18. It is observed that the Informant's main grievance emanates from the Agreement that was entered into between the Informant and the OP group in 2012. The Informant has alleged that the OP group being a dominant player in the market has imposed unfair and arbitrary terms and conditions in the Agreement and that such conduct violates the provision of Section 4 of the Act.



19. Pursuant to perusal of the materials available on record, the Commission finds that the issue for determination in the instant case is: *Whether the OP group has contravened the provisions of Section 4 of the Act?*
20. Section 4 of the Act proscribes abusive conduct by a dominant enterprise. Since the conduct of the OP group needs to be analysed under Section 4 of the Act, the existence of a position of dominance in terms of the Act needs to be determined first as there can be no abuse of dominance in the absence of dominance. The position of dominance of an enterprise is, usually, with context to a relevant market within which such an enterprise is alleged to be abusing its position.

#### ***Relevant Market***

21. On 09.11.2016, the Commission had considered the Investigation Report of the DG and observed that while defining the relevant market the DG had not confined itself to the property that was the subject matter of the case *i.e.* an apartment/ flat. Accordingly, the Commission had defined the relevant market as the market for the '*provision of services for development and sale of residential apartments/ flats in Gurgaon*'.
22. While defining the relevant product market, an important factor to be seen is that once the buyer decides to buy a residential apartment/ flat, whether substitutability and interchangeability is possible with another residential apartment/ flat generally offered in the same relevant product market by other players operating in the same geographic market. For the said purpose, the relevant factors that a buyer considers before purchasing a particular product have to be considered. Some of the factors which combined together determine the aspect of substitutability and interchangeability include the budget, location of the project, quality of construction, general plan of development, amenities provided by the builder, materials used, value for





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money, developer's/ group's brand value, its expertise in the field, perception of brand in general, historical background, number of completed projects, possession/delivery within reasonable time and history of litigation are few of the many factors that are considered by the buyers while approaching a particular developer/ builder. Based on these factors, substitutability is possible within the entire market of services provided by the developers/ builders in respect of residential apartments/ flats launched in a particular period. Further, even if the factors provided under Section 19 (7) of the Act are considered then in terms of physical characteristics and end use, price and consumer preferences, the market for "*the provision of services for development and sale of residential apartments/ flats*" can be considered to be the relevant product market in the present case.

23. Further, the city of *Gurgaon* can be considered to be the relevant geographic market in the instant case based on factors like different regulatory authorities and different rules and regulations for Gurgaon, Delhi, Noida, *etc.*, separate master plan, differential cost of land development, prices, geographical distances, connectivity with airport and capital and the preferences of the consumers. The learned counsel for the OP group has, however, argued that the relevant geographic market should extend to the whole of NCR. The Commission is not in agreement with this argument. It may be noted that a relevant geographic market means an area where goods or services are sufficiently inter-changeable or substitutable under similar conditions of competition and are distinct from its neighbouring areas. The Commission is of the view that the entire region of NCR cannot be said to be one market. Though like Gurgaon, other cities in NCR such as Ghaziabad, Faridabad and Noida also enjoy proximity to Delhi, however, various aspects like the ecosystem of the residential area in terms of schools/ hospitals/ market-places/ neighbourhood, locational advantage, potential transportation/ travel cost in terms of time as well as money for the buyers,



the level of development of infrastructure, *etc.* play a crucial role in consumer preferences and hence in determining the relevant market.

24. The Commission observes that if the cities in NCR like Noida or Ghaziabad or Faridabad are compared with Gurgaon as per the criteria laid down above, it becomes apparent that the conditions of competition in these cities are not homogenous. Hence, these cannot together be considered as one geographic market. Even if there is a 5% increase in the price of the properties in Gurgaon, a consumer's preference will not change since there are other external factors to be considered while purchasing a residential property in the market. The geographic region of Gurgaon has gained relevance owing to its unique circumstances and proximity to Delhi, Metro Stations, preference by MNCs, big commercial and institutional centres, shopping malls, well developed infrastructure, wide roads, *etc.* Thus, in view of the foregoing, the Commission opines that the city of Gurgaon is a separate relevant market.

### ***Dominance***

25. With respect to dominance, the Commission observes that the DG has primarily relied upon two sources to obtain data for analyzing the market share, size & resources of different players, and the land bank in credit of each player in the relevant market, *i.e.*, DGTCP and Haryana Urban Development Authority (HUDA) and from other players/ developers operating in the market.
26. In the instant case, in order to analyse the market share of the OP Group with respect to licensed land allotted by the DGTCP, the DG has observed that residential licenses were granted to around 96 developers during the period 2007-08 to 2011-12 for a cumulative total land of 5,549.38 acres. Out of this OP Group had a share of 8.30% and occupied 3<sup>rd</sup> Position with



respect to its competitors such as Emaar MGF, Vatika, Ireo and Unitech with a share of 8.84%, 8.56%, 7.68% and 7.30% respectively.

27. Further, with regard to the total residential apartments/ flats launched during the period 2011-12 to 2014-15, the DG has observed from the data submitted by around 40 developers that there were 30 developers who launched projects in the relevant market during the relevant period, out of which the OP group was at 2<sup>nd</sup> position with a market share of 8.93%. Furthermore, if the market shares are considered for the years 2011-12 and 2012-13 (*i.e.* the years when the Informant decided to purchase the residential apartment from the OP group) then it is observed that the OP group was at 2<sup>nd</sup> and 4<sup>th</sup> position in these years with a market share of 10.67% and 7.69%, respectively. In view of the aforesaid, it can be inferred that there were several developers who had launched their projects at the time the Informant purchased the residential apartment and that the OP Group did not hold a dominant position in such fragmented market where 90 % of the residential apartments/ flats were launched by other developers.

28. From the data collected by the DG from around 40 developers with regard to the total residential apartments/ flats sold unit-wise as well as value-wise during the period 2011-12 to 2014-15, the DG has observed that there were 39 developers who sold residential apartments/ flats in the relevant market during the relevant period, out of which the OP group was at 1<sup>st</sup> position in terms of units sold as well as value of units sold with a market share of 8.38% unit-wise and a market share of 17.40% value-wise. Further, if the market shares are considered for the years 2011-12 and 2012-13 (*i.e.* the years when the Informant decided to purchase the residential apartment from the OP group) then it is observed that unit-wise as well as value-wise OP group was at 1<sup>st</sup> and 2<sup>nd</sup> position respectively in these years. In the years 2011-12 and 2012-13, the unit-wise market share of the OP group was 8.46% and 8.36% respectively and its value-wise market share was 10.39%



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and 8.95% respectively. Given such a market where more than 90% of the units were sold by developers other than the OP group and approximately 50% by the top ten developers, it cannot be said that the OP has ability to operate independently regardless of its competitors.

29. Apart from the above, the DG has analysed market position/ shares of the developers in the relevant market on the basis of other parameters such as per unit average sale price and inventory, which also demonstrate that during the relevant period, the relevant market comprised of a number of players competing for the top position with the OP group.

30. Additionally, the DG has assessed the financial strength of the OP group and found that the same is evident from its assets and liabilities, as it has huge reserves and surplus exceeding that of their competitors. Even so a considering other factors like the number of players in the market, the number of residential projects launched and sold by the OP group and its competitors and entry of new players over the past four years in the relevant market indicate that the OP group no longer has the ability to influence the market in its favour.

31. With regard to the dependence of consumers on the OP group and entry barriers, it is noted that there are several established real estate players that are operating in the same field as the OP group providing choices to the consumers intending to purchase residential apartment/ flat. Given the options available in the relevant market, even at the time the Informant had decided to purchase residential apartment/ flat, it does not appear that the consumers were dependent on the OP group. Moreover, there is no regulators bar on the entry of new players in the market. The presence and rapid growth of the innumerable players in the market itself refutes the issue of entry barrier in the instant case.



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32. Thus, after assessing the facts of the present case in terms of the factors in the Act, the Commission is of the view that the OP group does not have a dominant position in the relevant market in terms of Section 4 of the Act.
33. The Commission is conscious of the fact that the OP group was found to be in a dominant position in Case no. 19 of 2010 (Belaire Owner's Association v DLF Limited and Others) and in other subsequent cases. However, it is noteworthy that the present case is distinct from these previous cases. The primary distinguishing factor is the period of assessment. It is to be borne in mind that the markets by their very nature are dynamic and keep changing with time. Therefore, while analysing dominance under the provisions of the Act, an important factor that needs to be taken into consideration is the time-period during which the contravention of the provisions of the Act is alleged. In the present case, it is noted that the property in relation to which the allegation of abuse has been made was booked in 2011-12, whereas in the previous cases the property was booked in the period 2006-2009. The investigation by the DG shows that the market dynamics as they existed then are different from those in 2011-2012. Several new players have entered the geographic market of Gurgaon to provide the services of development of residential apartments. These include not only new players competing to make a space for themselves in the market but also players with established brand names such as Tata and Godrej. Thus, in such a changed market scenario during the relevant period no individual player including the OP group appears to have the ability to influence the conditions of competition in the relevant market.

#### *Abuse of Dominance*

34. Since the OP group does not appear to be in a dominant position in the relevant period with the changed scenario, there remains no requirement to examine the allegations of abuse of dominance, since in the absence of



dominance there can be no case of abuse of dominance in terms of Section 4 of the Act.

***Conclusion***

35. In view of the above, the Commission concludes that the contravention of the provisions of Section 4 of the Act is not established in the instant matter. Hence, the case is ordered to be closed under Section 26(6) of the Act.

36. The Secretary is directed to inform the parties accordingly.

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

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

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

**Sd/-  
(Justice G. P. Mittal)  
Member**

**New Delhi  
Dated: 31.08.2018**