



(Case No. 103/2013)

Anonymous

...Informant

And

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|---|--------------------------|
| (i) Bengal Greenfield Housing Dev. Co. Ltd | ...Opposite Party No. 1 |
| (ii) Bengal Park Chambers Hsg. Dev. Ltd. | ...Opposite Party No. 2 |
| (iii) Bengal Peerless Housing Dev. Co. Ltd. | ...Opposite Party No. 3 |
| (iv) Bengal Shelter Housing Dev. Ltd. | ...Opposite Party No. 4 |
| (v) Begal DCL Housing Dev. Co. Ltd. | ...Opposite Party No. 5 |
| (vi) Bengal Shrachi Housing Dev. Ltd. | ...Opposite Party No. 6 |
| (vii) Bengal United Credit Belani Housing Ltd. | ...Opposite Party No. 7 |
| (viii) Bengal Emami Housing Ltd. | ...Opposite Party No. 8 |
| (ix) Bengal Unitech Universal Infrastructure Pvt. Ltd. | ...Opposite Party No. 9 |
| (x) DLF Universal Ltd. | ...Opposite Party No. 10 |

CORAM:

Mr. Ashok Chawla
Chairperson

Dr. Geeta Gouri
Member

Mr. Anurag Goel
Member

Mr. M. L. Tayal
Member

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

Mr. S. L. Bunker
Member



Order under Section 26(2) of the Competition Act, 2002

This information has been filed under Section 19(1)(a) of the Competition Act, 2002, (“Act”)alleging violation of the provisions of Sections 3 and 4 of the Act by the Opposite Parties No. 1 to 10 (collectively referred to as “OPs”) with regard to development of a township project.

2. The Informant alleged that the Ministry of Urban Development, Government of West Bengal and West Bengal Housing Board (“WBHB”) acquired a huge parcel of land for a proposed new township called „New Town“ in Kolkata. After acquisition of land, Government of West Bengal handed over this parcel of land to West Bengal Housing Infrastructure Development Corporation (“WBHIDCO”), a wholly owned subsidiary of WBHB, with a mandate to WBHB and WBHIDCO to prepare a plan to populate this new township as soon as possible. Further WBHB entered into several joint ventures with various groups/developers (“JVs”)and also gave/sold land to other private developers like Bharti Realty Ltd., Bengal Unitech, DLF and others, to facilitate speedy and simultaneous development of land. Each JV partner was given 2-3-4 or more parcels of land of various sizes ranging from 1 acre to 5 acres or larger. It was alleged that almost all the JV partners were known developers of Kolkata and many of them knew each other and had partnership interest in each other’s projects.

3. It was averred that the construction of one of the projects was started in 2001-02 where units were advertised to be sold at a starting price of INR 1,050-1,100 per sq. ft approx. As the demand was huge, allotment was made through lottery. The Informant stated that WBHB, JV partners and private developers squatted on the remaining land parcels for quite long. Later Opposite Party No. 9 (“OP9”) as a private developer initiated project on small part of its land at a higher price. The justification given for higher price was inflation in construction cost. This system of JVs commencing new project not simultaneously but after lapse of sometime and at higher price continued and the reasons provided for such action were slow demand and inflation. The Informant, however, submitted that facts such as absorption of new supply of flats despite prices having gone upfrom Rs. 1100 to 4800 per sq. ft., sale of application form and allotment through lottery suggested huge demand, manipulated restricted supply and use of monopolistic and dominant status for monopolistic pricing and merciless exploitation of buyers.



4. The Informant also alleged that the JVs/developers sold the car parkings separately despite the fact that flat owner had undivided share in the land of the premises for all purposes. Developers delayed the delivery and paid no compensation and interest for the delayed period except OP9 but they increased area by adding new super built up area. The developers made buyers pay exorbitant maintenance bill without occupation certificates. All the JV developers overcharged super-built-up area and reduced the size of flat/unit by adding area of construction. Many of these JVs, without knowledge of buyer, inserted clause in the sale deed to amalgamate premises developed by them separately with one another at the will of developer and to retain right over the land and roof for future development and sale. The sale deed was drafted in such a manner that it appeared more like „transfer of right deed“. Almost all the JVs charged interest on delayed payment ranging from 15%-21% whereas in case of delay in delivery by JVs, the buyers were offered less than 1% and there were many clauses and riders in the agreement which enabled the JVs to go scot free even if there was a delay of a decade. Many of the JVs recovered price in excess of agreed amount before possession. Based on the above submissions the Informant contended that OPs were violating provisions of Sections 3 and 4 of the Act.

5. The Commission considered the information, facts and data placed on record by the Informant. The crux of the allegation of the Informant appears to be the launch of schemes by the OPs in such a manner that only one scheme was launched at a time rather than simultaneous launch and each subsequent scheme was launched at a higher price, thereby indicating a concerted action to restrict supply of flats.

6. In order to cover a case under section 3 of the Competition Act, it is necessary that there should have been an agreement between different enterprises for production, supply, distribution, storage, acquisition or control of goods or provision of services which was likely to cause an appreciable adverse effect on competition within India. The agreement could be in writing or oral or could be inferred from the circumstances. Section 2(b) provides that an agreement includes an arrangement or understanding or an action in concert of the parties. However, in the present case, there is no allegation of an agreement between the parties. The inference of an agreement cannot be drawn merely because different OPs launched their projects at different times. It is to be noted that the „New Town Kolkata“ was a project started by West Bengal Govt. under Public Private Partnership and this entire township was to be developed in a phased manner. It is well known that a township cannot be



developed at one go. In a phased manner development, there has to be someone who would come out with the project first and there would be someone who would come up with the project at the end. Merely because the prices of different projects differed from each other and the prices kept rising with passage of time would not show that there was an agreement among opposite parties for bringing out their projects one after another in a concerted manner. The „New Town Kolkata“ project is about 15 year old and is being developed in phased manner to meet the housing shortages. Different categories of flats and houses were to be brought out by private parties in cooperation with the government undertakings for development of the entire townships. 40% of the project land was reserved for bulk housing and remaining 60% of land was released to cooperatives/individuals for subsidised housing. There is no case made out by the informant of a concerted effort on the part of parties to launch projects on different dates. In fact this is a natural outcome of a phased manner development of the township.

7. The next issue arises whether there was an abuse of dominance. There are 10 OPs in the information given and according to informant itself, all OPs were developing different projects in „New Township Kolkata“ under PPP model. None of the parties had such market share that it could be considered as a dominant enterprise within the geographic are of New Township or in the surrounding areas. All the parties had to develop projects on the land allotted to them as per Rules& Regulations laid down by government. A customer had a choice out of different builders as to with whom he should register himself. Neither it is the case of the informant that anyone of the opposite parties was so economically strong that it could operate independent of the competitive forces prevailing in the New Town Kolkata. Therefore, no case is made out under section 4 of the Act.

8. Several allegations have been made by the informant in respect of many practices alleging that these practices were one sided and the builders were taking benefit of consumers weaknesses.

9. In view of the above discussion, the Commission considers that the case should be closed under section 26(2) of the Act and is hereby closed.

10. Secretary is directed to informed all concerned suitably.

New Delhi
Date: 12.02.2014

Sd/-
(Ashok Chawla)
Chairperson



Sd/-
(Dr. Geeta Gouri)
Member

Sd/-
(Anurag Goel)
Member

Sd/-
(M.L. Tayal)
Member

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