

**COMPETITION COMMISSION OF India**

**[Case No. 15/2012]**

Date: 04.07.2012

Owners and Occupants Welfare Association

**...Informant**

- (1) M/s DLF Commercial Developers Ltd.
- (2) Delhi Development Authority
- (3) M/s DLF Services Ltd.

**...Opposite Parties**

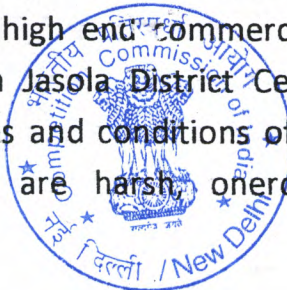
**Order under Section 26 (2) of the Competition Act, 2002**

The present matter relates to an information filed by the Owners and Occupants Welfare Association, DLF Towers, Jasola (hereinafter referred to as "the informant") under Section 19 of the Competition Act, 2002 (hereinafter referred to as the 'Act') alleging abuse of dominant position by M/s.DLF Commercial Complex Ltd. (hereinafter referred to as DLF).

2. The facts and allegations, in brief, as stated in the information are as under:

2.1 The Informant is a society registered under the Societies Registration Act, 1860 with the allottees of the DLF towers Jasola as its constituent members.

2.2 As per the Informant, DLF has abused its dominant position in the relevant market of high end commercial space in south west Delhi, more particularly in Jasola District Centre, Jasola. According to the Informant, the terms and conditions of the retail / commercial space buyers' agreement are harsh, onerous and burdensome to the



allottees. The Informant has stated that taking an undue and unfair advantage of its dominant position, DLF had sought to burden the members of the informant and other allottees with a unilateral imposition of conditions which are one-sided and operate to the extreme prejudice and detriment of the informant.

- 2.3 The Informant has further stated that Clause 1.5 of the Agreement does not contain the proportionate liability clause to fasten commensurate penalty damages on DLF for breach in discharge of its obligation. Clause 1.5 of the agreement stipulates that due to change in the Layout Building Plan, if any amount was to be refunded to the allottees, DLF would not refund the said amount, but would retain and adjust this amount in the last installment payable by the allottees.
- 2.4 Similarly, Clause 23 of the Agreement stipulates that the intending allottees shall have the absolute ownership of undivided proportionate share in the land underneath the building commensurate with the allotted super area. But, intending seller can raise finance/loan from any Financial Institution by way of mortgage/ charge/securitization etc. subject to the condition that the said premises shall be free from encumbrances at the time of execution of Conveyance Deed or Deed of Apartment and/ or Deed of Sub-lease.
- 2.5 As per the Informant, in terms of para 13.3 of the Agreement, DLF has unilaterally reserved the right to cancel the agreement in the event that the intending allottees fails to execute the Conveyance Deed and/ or Deed of Apartment within a period of 60 days from the date of intimation of receipt of certificate of use and occupation of the building.
- 2.6 As per the Informant, Clause 35 of the Agreement which purports to be a waiver clause reveals that it is a non obstante clause, which is beneficial to DLF which may in its sole option and discretion, without





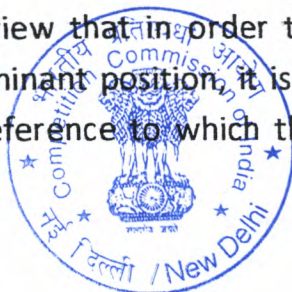
prejudice to its rights waive the breach by the intending allottee such that the intending allottee is required to pay interest at the rate of 15% per annum for the first ninety days after the due date and thereafter @ 18% per annum.

- 2.7 The Informant has also submitted that Clause 3.5 with Clause 11.9 which deals with the corresponding remedy for the default of failure to deliver possession stipulates that if DLF is unable to give possession within (36) months the agreement would render the DLF to refund the amount with simple interest @ 9%, whereas if the agreement is terminated by the DLF then it would be liable to pay compensation @ 25 per square feet for per month delay which works out to 1.87% per annum.
- 2.8 The Informant has contended that Clause 10.2, wherein DLF contemplates to complete construction of the premises within a period of 36 months, subject to the exceptions stated therein, has been kept wide open to provide for all contingencies so that the conditions are skewed favourably towards DLF and to the prejudice and detriment of the intending allottees.
- 2.9 The Informant also alleged that the DLF used its position of dominance to impose an unconscionable and arbitrary diktat that conversion from leasehold to freehold could be initiated, if and when all the unit holders/allottees paid up their respective pro rata charges. This was at complete variance to counter their stand that they would get the conversion process underway once they receive the entire consideration for the premises. Thus the Informant contends that DLF very conveniently and adroitly sidestepped its primary onus of conversion since at the time, individual conversion could not be undertaken, by shifting the onus on the allottees to collect all the amounts, pending which DLF would seek shelter under the unsustainable Clause 13.2 of the Agreement.





- 2.10 The Informant has also alleged that DLF has always held the obtainment of occupancy certificate dated 02.06.2009 to delay and obfuscate the process of conversion for more than 20 months for no tenable reason exposing the allottees to an escalation, both in the circle rate as well as to the incidence of unearned increase. Thus, in monetary terms DLF has charged all the intending allottees an additional twenty percent, if the monetary gain is ascertained and quantified, a loading of 20% on the total saleable super area works out to be a huge sum of Rupees Two Hundred forty Nine Crore.
3. The Commission has carefully considered all the facts and allegations mentioned in the information together with all the material available on record.
4. The Commission notes that DLF is a company registered under the Companies Act, 1956 and is engaged in providing services for the development of real estate in India. Therefore, the activities being performed by the DLF are covered under the definition of 'Enterprise' given in Section 2(h) of the Act.
5. The Commission observes that the fundamental allegation of the Informant in the matter is that the terms and conditions of the agreement are harsh, onerous and burdensome to the allottees. It is further stated by the Informant that taking an undue and unfair advantage of its dominant position, DLF has sought to burden the members of the Informant and other allottees with a unilateral imposition of conditions which are one-sided and operate to the extreme prejudice and detriment of the Informant.
6. The Commission is of the view that in order to determine whether any enterprise is abusing its dominant position, it is necessary to first find out the relevant market with reference to which that particular enterprise is





alleged to be dominant. If it is found that the enterprise is in fact enjoying a dominant position in that relevant market, the second issue would be whether the enterprise is abusing its dominant position in any manner in that market in terms of Section 4 of the Act.

7. The Commission observes that the relevant product market in the case is the "provision of services for development and sale of commercial space". As far as the relevant geographic market is concerned, it cannot be confined to mere Jasola District Centre or South West Delhi. The Informant's contention of geographic market being South West Delhi and more particularly Jasola District Centre is not justified and has no basis. Based upon the factors of demand and supply substitutability, the relevant geographical area in this case would be the geographic area of Delhi.
8. In view of the determination of Relevant Product Market and Relevant Geographic Market, the Commission holds that the Relevant Market in this case is "provision of services for development and sale of commercial space in geographical area of Delhi".
9. As regards dominance of DLF in the relevant market as above, explanation (a) to Section 4 of the Act defines 'dominant position', as a position of strength, enjoyed by an enterprise, in the relevant market, in India, which enables it to operate independently of competitive forces prevailing in the relevant market; or affects its competitors or consumers or the relevant market in its favour.
10. The Commission, on this aspect, observes that there are a large number of developers and builders in Delhi who are engaged in developing commercial space. Within Jasola District Centre itself, there were about 11 other developers who had their projects as per the list given in para 34 of the information. The information also states that there was ample supply side substitutability in this case since a number of developers were active in



the area of Delhi and were offering commercial space at more competitive price than DLF.

11. On a careful consideration of the entire matter, the Commission is of the view that based on the facts of the case as stated in the information, the dominance of the DLF in the relevant market does not get established. The Commission accordingly holds that prima facie no case is made out for directing the Director General (DG) under Section 26(1) of the Act to conduct investigation into the matter.
12. In view of foregoing, the Commission deems it fit to close the proceedings of the case under Section 26(2) of the Act.
13. The Secretary is directed to communicate the decision of the Commission to the Informant accordingly.

Sd/-  
Member (G)

Sd/-  
Member (GG)

Sd/-  
Member (AG)

Sd/-  
Member (T)

Sd/-  
Chairperson

Certified True Copy



SP Gallaud  
06/07/2012  
S.P. GALLAUD  
ASSISTANT DIRECTOR  
Competition Commission of India  
New Delhi