



COMPETITION COMMISSION OF INDIA

Case No. 16 of 2015

In Re:

Ms. Geeta Kapoor

H. No. 42, Sector, A, Pocket C,

Vasant Kunj, New Delhi - 110070

Informant

And

1. DLF Qutab Enclave Complex Educational Charitable Trust

DLF Centre, Sansad Marg, New Delhi - 110001

Opposite Party No. 1

2. DLF Ltd.

DLF Shopping Mall, 3rd Floor,

Arjun Marg, DLF City Phase-I,

Gurgaon – 122002

Opposite Party No. 2

CORAM

Mr. Ashok Chawla

Chairperson

Mr. S. L. Bunker

Member

Mr. Sudhir Mital

Member

Mr. Augustine Peter

Member

Case No. 16 of 2015

Page 1 of 10



Mr. U. C. Nahta
Member

Mr. M. S. Sahoo
Member

Appearances (For the Informant): Shri K. K. Sharma, Advocate

Shri Tanveer Verma, Advocate

Shri Sumeet Kaul, Advocate

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

1. The information in the present case has been filed by Ms. Geeta Kapoor (hereinafter, the '**Informant**') against DLF Qutab Enclave Complex Educational Charitable Trust (hereinafter, '**OP 1**') and DLF Ltd. (hereinafter, '**OP 2**') under section 19(1)(a) of the Competition Act, 2002 (hereinafter, the '**Act**') alleging, *inter alia*, contravention of the provisions of section 4 of the Act in the matter.
2. As per the information, OP 1 is a trust established by OP 2 vide Trust Deed dated 03.02.1988 (hereinafter, the '**Trust Deed**') for the purpose of providing education facilities through establishment and maintenance of educational institutions and by other means in the colony to be developed by OP 2. OP 2, a public limited company, has been engaged in development and sale of residential, commercial and retail properties in and outside India. It is stated that OP 2 purchased freehold lands, mainly from the Government of Haryana for setting up of a township in the name of DLF Qutab Enclave Complex (hereinafter, the '**Complex**') in Gurgaon for which it was granted license under the Haryana Development and Regulation of Urban Areas Act, 1975. In accordance with Rule 11 of the Haryana Development and Regulation of Urban Areas Rules, 1976 (hereinafter, the *Case No. 16 of 2015*



‘**Rules**’), for setting up of a residential colony/ complex OP 2 was obliged to enter into an agreement with the Director, Town and Country Planning, Government of Haryana, Chandigarh (hereinafter, ‘**Competent Authority**’) and accordingly an agreement was entered into between OP 2 and the Director, Town and Country Planning. One of the obligations of the aforesaid agreement was construction of amenities *e.g.*, schools, hospitals *etc.* in the Complex. As per the ‘Trust Deed’, fourteen sites were earmarked by OP 2 for construction of educational institutions in the Complex. The right to lease/ transfer of the said sites were vested with OP 1 for fulfilling the obligations under the aforesaid agreement including construction of buildings and running of schools.

3. It is stated that a lease agreement dated 27.01.1993 was executed between the Informant and OP 1 (hereinafter, the ‘**Lease Agreement**’) to set up and run a creche facility on plot no. 2403 in Phase II of the said Complex. The Informant has alleged that the said ‘Lease Agreement’ is a standard form of agreement and the terms and conditions laid down in the ‘Lease Agreement’ were unilaterally decided by OP 1. As per the ‘Lease Agreement’, the Informant was required to pay a one-time premium of Rs. 5,80,000/- and annual lease rent of Rs. 5,800/- (to be paid in advance during the first month of each financial year *i.e.*, by 30th April of each financial year) for the entire period of lease which is 95 years. Further, post execution of the ‘Lease Agreement’, the Informant was required to obtain a ‘No Objection Certificate’ from OP 1 which was to be submitted to the Competent Authority for approval of building plan.
4. The Informant has submitted that she had made the full payment of one-time premium through instalments, the last instalment being paid on 26.01.1996 and she has been paying the annual lease rent since 1993. It is averred that though OP 1 had issued NOC to the Informant on 12.02.1993 for getting approval of the building plan but, it had not obtained zoning plan approval from the Competent



Authority. As per the regulatory requirement, the zoning plan had to be approved by the Competent Authority before the approval of site plan as getting the zoning approval is pre-condition for the sanctioning of building plan. As per the Informant, at the time of execution of 'Lease Agreement' it was not brought to its knowledge that OP 1 had not obtained the zoning approvals from the Competent Authority and zoning approval is pre-condition for sanctioning of the building plans. The Informant had requested OP 1 to get the zoning approved but she was informed that certain objections were raised by the Competent Authority regarding third party and fourth party rights. It is submitted that while the Informant was inquiring from the Competent Authority the status of the zoning approval, OP 1 demanded retrospective maintenance charges which the Informant had paid considering the huge investment she has already made in the plot.

5. The Informant has submitted that as per clause 24 of the 'Lease Agreement', on payment of the final instalment, OP 1 was required to execute the lease deed based on already agreed terms of the 'Lease Agreement'. However, OP 1 paid no heed to the repeated request made by the Informant to execute the lease deed. On 04.11.2004, the Informant visited the office of OP 1 to meet its representatives wherein a new lease deed (hereinafter, the '**First Lease Deed**') was proposed to be executed by OP 1. It is averred that the terms of the 'First Lease Deed' were altogether different and alleged to be contrary to the 'Lease Agreement' initially entered between the parties.
6. It is also submitted that the Informant had received a cheque of Rs. 5800/- in return for her payment made as advance lease rent for year 2007-2008. That multiple correspondences took place to follow up with OP 1 for compliance of agreed terms between the parties and clarifications on return of lease rent for the year 2007-08. It is further averred that OP 1 raised supplementary conditions in the proposed 'First Lease Deed' unrelated to the earlier 'Lease Agreement' like



lease rent for 10 years, maintenance charges, lease extension charges, stamp duty *etc.* It is alleged that instead of abiding by the agreed terms, OP 1 compelled the Informant to enter into 'First Lease Deed' on fresh terms favouring OP 1 and thereby causing inadvertent delay in the construction of building for the crèche.

7. The Informant also claimed that vide its letter dated 05.10.2007, OP 1 sent another draft lease deed (hereinafter, the '**Second Lease Deed**') which again contained unfair terms and conditions such as gross difference in the annual lease rent, unilateral right to impose monetary penalty in case of misuse of plot, tying the Informant to purchase electricity exclusively from OP 1 or its agents, imposition of unfair penalties, no stipulation for refund of premium money paid by the Informant under the earlier lease deed, unilateral right to OP 1, *etc.*
8. The Informant has submitted that she continued to pay the annual lease rent for the respective years. However, on 08.01.2011, she received a legal notice from OP 1 for termination of the lease deed dated 27.01.1993 and was given 30 days' notice to rectify the default. This, as per the Informant, could only be considered as an act of abuse of dominant position and status in the market by OP 1. In response to the said legal notice of OP 1, the Informant replied that she had already submitted the building plan to the Competent Authority wherein she had enclosed annual lease rent for the period up till 31.03.2011 and also maintenance charges.
9. The Informant has also submitted that she had intimated OP 1 (*vide* letter dated 13.06.2011) her willingness to sign the new lease deed and pay all the dues as required and accordingly a cheque was sent on 01.04.2012 for the annual lease rent for 2012-13. The Informant however, received a letter dated 03.05.2013 from OP 1 regarding cancellation of the 'Lease Agreement' dated 27.01.1993 *vide* legal notice 08.01.2011.



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10. The Informant has alleged that OP 1 has abused its dominant position by imposing unfair terms, conditions and prices on her which is anti-competitive under section 4(2)(a)(i) and 4(2)(a)(ii) of the Act. Further, it is alleged that OP 1 was leveraging its dominant position in the relevant market to protect its position in the market for provisioning of electricity services to the residents in the Complex.
11. Aggrieved by the aforesaid alleged abusive conduct of OP 1, the Informant has prayed before the Commission to institute an inquiry into the abuse of dominant position by OP 1. Besides, it has also sought the modification of the proposed lease deed and possession of the plot.
12. The Commission has perused the facts and documents placed on record. The Informant had filed an amendment to the information on 19.06.2015 and 24.06.2015. Further, the Commission heard the counsel for the Informant on 25.06.2015. Having a complete reading of the documents placed on record and hearing the arguments presented by the counsel for the Informant, it appears that the Informant is aggrieved because of the alleged unfair terms and conditions imposed by OP 1 through successive draft lease agreements proposed to be executed between the Informant and OP 1. The same have been alleged to be abusive in terms of section 4 of the Act.
13. At the outset, it may be noted that all such lease deeds pertain to the period prior to 20.05.2009 when the relevant provisions of the Act *i.e.*, section 4 came into force. The Informant has urged that because of the unfair terms and conditions imposed by OP 1 *vide* the successive draft lease agreements, she could not initiate the construction of the building for crèche for which the plot was taken on lease from OP 1. Ultimately, the 'Lease Agreement' dated 27.01.1993 was terminated by OP 1 *vide* its letter dated 03.05.2013 pursuant to the legal notice dated



08.01.2011. The Commission cannot look into the fairness of the clauses of the 'Lease Agreement' and draft lease deeds entered into prior to 20.05.2009, the provisions of the Act being prospective in nature. However, the events that took place post 20.05.2009 have been analysed to determine if any contravention has taken place in the instant matter.

14. Before the conduct of OP 1 is analysed, it is imperative to determine the relevant market and assess whether OP 1 is dominant or not in that relevant market.

15. The counsel for the Informant has submitted that as per rule 4 of the Haryana Development and Regulation of Urban Area Rules, 1976 (1976 Rules), a real estate developer, when developing a colony, has to reserve 45% of the land for the purpose of roads, open spaces, schools, public and community buildings and other common uses, crèches and play schools also come under such purpose. Parties desirous of constructing and running a crèche/ play schools in such colonies have to approach the real estate developer who is developing the colony for procuring land. Such parties, like the Informant in the instant case, are the consumers to whom the services of leasing/ transfer of such land are provided by the real estate developers. Accordingly, the relevant market proposed by Informant is 'service of leasing plots for developing and running crèches/ play school in residential areas other than HUDA colonies in Gurgaon'. It is submitted by the Informant that plots for developing and running crèches are not substitutable with other kind of institutional plots and plots in HUDA colonies do not belong to the same relevant product market.

16. The Commission is, however, of the view that for developing/ running of a crèche, the potential developer does not necessarily require to develop/ run the same within the residential colony only. Buying plots from the area earmarked for developing amenities as per the Rules within the residential colony is one of the



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many alternatives available. Apart from that, there are other alternatives in the form of plots/ units where the potential purchaser can develop crèche/ play school. Therefore, the Commission is of the opinion that the relevant product market in the present case would be market for *'lease/ sale of plots/ units for development and running of crèches/ play schools'*. With regard to the relevant geographic market, it is observed that the conditions of competition are distinctly homogenous in Gurgaon and can be distinguished from the conditions prevailing in the neighbouring areas. Therefore, the relevant geographic market in the instant case is Gurgaon. Accordingly, the relevant market to be considered in this case is the market for *'lease/ sale of plots/ units for development and running of crèches/ play schools in Gurgaon'*.

17. With regard to dominance, the Commission observes that dominance of OP 1 needs to be seen in context of the present conduct. Undoubtedly, the Informant and OP 1 entered into the 'Lease Agreement' in 1993 for the first time and there were successive draft lease agreements proposed to be executed between them in 2004 and 2007. The Commission does not have the mandate to look into such agreements and the position of OP 1 during those periods. The only conduct that occurred post 20.05.2009 was during 2011 to 2013 *i.e.*, from the time when the legal notice was served by OP 1 to the Informant till the termination of the 'Lease Agreement'. For analysing the dominance of OP 1, the Commission took into account the assets and resources of the DLF Group as a whole. It may be noted that the OP 1 and OP 2 are part of the DLF group. In many previous cases, the Commission has held group entities belonging to DLF group qualifying the definition of 'group' as provided under section 5 of the Act.

18. As noted above, the potential developer of a crèche/ play school does not necessarily require to develop/ run the same within the residential colony/ complex only. Therefore, considering that the relevant product market is not



restricted to the plots earmarked for amenities in the residential colonies, the Commission does not find OP 1/ DLF Group to be dominant. The Informant and other developers have several alternatives in the form of plots/ units where they can develop crèche/ play school. Therefore, the Commission is of the opinion that *prima facie* OP 1/ DLF Group is not dominant in the relevant market as defined above.

19. Even otherwise, the conduct of OP 1 also does not seem to be arbitrary in nature.

The letters/ emails exchanged between OP 1 and Informant which are placed on record reveal that there were certain disputes between them since 1993 regarding the zoning approval which OP 1 was supposed to obtain from the Competent Authority. Thereafter, as per the Informant, OP 1 sent her the first draft (2004) and the second draft of lease agreements (2007), the terms of which were alleged to be one sided and in contradistinction to the 'Lease Agreement' entered into between them in 1993. However, the Commission notes that the first draft (2004) and the second draft of lease agreements (2007) were only drafts which were shared by OP 1 with the Informant and the same were open to discussion as per the letter sent by OP 1 to the Informant on 08.04.2005. Thereafter, OP 1 sent a legal notice to the Informant in 2011 and the contents of the same highlight the failure on the part of the Informant to initiate construction in spite of the zoning approval from the Competent Authority. The 'Lease Agreement' was then terminated in 2013. The Commission is of the view that the matter does not raise any competition concern.

20. Based on the foregoing, the Commission finds no *prima facie* case of contravention of the provisions of sections 4 of the Act by DLF group. The case is accordingly ordered to be closed under section 26(2) of the Act.



21. The Secretary is directed to inform all concerned accordingly.

Sd/-

(Ashok Chawla)
Chairperson

Sd/-

(S. L. Bunker)
Member

Sd/-

(Sudhir Mital)
Member

Sd/-

(Augustine Peter)
Member

Sd/-

(U. C. Nahta)
Member

Sd/-

(M. S. Sahoo)
Member

New Delhi

Date:17/11/2015