Competition Commission of India
Case No. 20 of 2012

May 16, 2012

In re:

M/s Silarpuri Colonizers Private Limited **...Informant**

v.

M/s The Emaar MGF Land Limited **...Opposite Party**

Present: Shri Rishi Kumar Awasthi, counsel for the informant.

Coram:

Hon'ble Mr. Ashok Chawla
(Chairperson)

Hon'ble Mr. H. C. Gupta
(Member)

Hon'ble Dr. Geeta Gouri
(Member)

Hon'ble Mr. Anurag Goel
(Member)

Hon'ble Mr. M.L. Tayal
(Member)

Hon'ble Mr. Justice (Retd.) S. N. Dhingra
(Member)

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

The present information has been filed under section 19(1)(a) of the Competition Act, 2002 ('the Act') by M/s Silarpuri Colonizers Private Limited ('the informant') against M/s The Emaar MGF Land Limited ('the opposite party') seeking *inter alia* an investigation into the alleged abuse of dominance by the latter in contravention of the provisions of section 4 of the Act.

2. Briefly stated, the informant is *inter alia* engaged in real estate business and investment activities in real estate in major real estate projects in India. The opposite

party is described as a joint venture between M/s Emaar, Dubai and M/s MGF, India.

3. It is averred in the information that at the end of year 2007, the informant was approached by the marketing executives of the opposite party with respect to its upcoming residential project *viz.* Palm Drive in Sector -66, Gurgaon, Haryana. The informant was also shown a sample flat of the project constructed by *The Leighton*- described as the world's leading and reputed construction company. It is averred in the information that in view of the above facts/assurances/promises of the opposite party, the informant booked 90 units in the project. An understanding was arrived at between the parties with regard to various aspects pertaining to the said project such as pricing, locations, construction and designing specifications. Further, various concessions were also assured by the opposite party to the informant due to bulk booking.

4. The informant stated that between November, 2007 to August, 2008 a sum of Rs. 9 crores was paid by the informant to the opposite party. No construction was started before receipt of the aforesaid sum and the same started only in November, 2008.

5. The informant levelled various allegations against the opposite party. It alleged that terms of the Buyer's Agreement ('the Agreement') dated 01.07.2008 were varied from what was agreed upon and undertaken to be complied with by the opposite party. The assurance that the project would be undertaken by *The Leightor* turned out to be false and an alluring tactics in letting initial investments/bookings to be carried.

6. Making a detailed reference to the clauses of the Agreement, it is contended that the same were anti-competitive and in abuse of dominance. Objection is taken to clause 1.2(b) of the Agreement which provided that the allottee had to pay a booking amount of Rs. 10 lacs at the time of registration/ provisional allotment. It is alleged that no unit, either provisionally or otherwise was allotted to the informant till after six months of the payments. Without allotting any unit, no advance or booking amount could have been collected by the opposite party.

7. Referring to clause 1.2(d) of the Agreement, it is alleged that the same was highly anti-competitive in nature and in abuse of dominance in as much as it provided for the right of the opposite party to adjust/ appropriate instalment amount first towards interest and other sums and the balance towards the sale price and such adjustment/ appropriation to be done at the sole discretion of the company and the allottee not to object, protest or direct the company to adjust payments in any other manner.

8. It is alleged that under clause 1.3 of the Agreement in case of delay in making payments by the allottee, the company had a right to terminate the Agreement and forfeit the earnest money. Besides, the company was entitled to charge interest @15% *p.a.* compounded at the time of every succeeding instalment from the due date of

instalment till the date of payment. On the other hand, under clause 14(b)(i) of the Agreement, if the completion of the project was delayed for the reasons stated therein, the company was to be entitled to the extension of time for handing over of the possession of the apartment. Further, under clause 14(b)(ii), the company reserved the right to suspend construction and the allottee was not to claim compensation of any nature whatsoever.

9. Lastly, a reference has been made to clause 16 of the Agreement whereby the allottee was entitled to payment of compensation for delay in handing over the possession at the rate of Rs. 5 per sq ft. per month which according to the informant was less than the interest of 1.5% p.a.

10. On a careful perusal of the information it is apparent that the Agreement was signed between the parties on July 01, 2008 whereas the present information has been filed in March, 2012.

11. On merits, the contravention of the provisions of section 4 of the Act is not made out. In the present case, the relevant market appears to consist of services of developer/ builder in respect of construction of residential accommodation in Gurgaon. The informant, however, has defined the relevant geographic market as whole of India. No material or data has been placed on record to suggest the opposite party was a dominant player in Gurgaon where the project is located or in the whole of India. No averment has been made to show that the opposite party enjoyed a position of strength in the relevant market which enabled it to operate independently of competitive forces prevailing in the market or to affect its competitors or consumers or the relevant market in its favour. Moreover, no material has been placed before the Commission as required under section 19(4) of the Act to enable the Commission to determine the dominance of the opposite party considering market share of enterprise, size and resources of the enterprises, size and importance of the competitors, economic power of the enterprises including commercial advantages over competitors, dependence of consumers on the enterprise etc. As the dominance of the opposite party is not even indicated, the issue of abuse thereof does not arise for consideration. In this connection, it is pertinent to point out that the Commission in *Belaire Owner's Association* v. *DLF Limited*, Case No. 19 of 2010 *vide* its order dated 12.08.2011 had found DLF Ltd. in a dominant position in the relevant market of services of developer/ builder in respect of high-end residential accommodation in Gurgaon.

12. Similarly, no material is placed on record to even *prima facie* make out a case of contravention of section 3 of the Act.

13. Resultantly, there exists no *prima facie* case and the matter is closed forthwith in terms of the provisions of section 26(2) of the Act. However, this would not debar the informant from approaching any other forum for redressal of his grievances.

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

Sd/-
Member (G)

Sd/-
Member (GG)

Sd/-
Member (AG)

Sd/-
Member (T)

Sd/-
Member (D)

Sd/-
Chairperson

Certified True Copy

S. P. GAHLAUT
Assistant Director
Competition Commission of India
New Delhi