

# COMPETITION COMMISSION OF INDIA

Case No. 22/2012

6<sup>th</sup> September, 2012

Dr. Deepa Narula  
C/o Mr. Prashant Narula  
B-1/602 A, Janak Puri  
New Delhi – 110 058

Informant

Taneja Developers and Infrastructure Ltd.  
9, Kasturba Gandhi Marg  
New Delhi – 110 001

Opposite Party

## Order under Section 26 (1) of Competition Act 2002

### As per R.Prasad (Dissenting)

The instant information has been filed by Dr. Deepa Narula (Informant) *uls* 19(1) (a) of the Competition Act, 2002 ('the Act') against M/s. Taneja Developers and Infrastructures Ltd. (Opposite Party). The main grievance of the informants is that the opposite party failed to fulfill its obligation by not handing over the possession as promised in time and therefore, violated section 4 of the Competition Act, 2002 (the Act) by abusing its dominant position.

2. As per the information, the informant is a Non Resident Indian, currently residing in New Delhi. The Opposite Party is a real estate developer engaged in the business of developing and selling residential and commercial properties having its registered office at New Delhi. The informant submitted that relying upon the assurance of the OP to deliver the property within the time bound manner, Informant on 12-04-2006, booked a commercial plot measuring 204 Sq. yards at a price of rupees 29,500/- per Sq. yards in an upcoming real estate project of the OP named as TDI City Mohali. The informant complied with all the demand notices from the OP and made a total payment of Rs. 18,05,400/- till May 2008 against the booking of the plot. The OP had accepted bookings/advance amounts against the said project even though it was still on paper and the necessary approvals for the same had not yet been received. Though an amount of Rs. 12 Lakhs was taken from the informant in April 2006, it was only in January 2008, the approval of TDI City Mohali from the Punjab Government was received. Informant had not been allotted any plot by the



OP developer till now even after six years from the date of booking.

3. Informant alleged that OP abused its dominant position in the relevant market of Mohali by withholding informant's deposited money and not providing any information regarding development of the project. At the time of booking, OP was the sole developer with unique plan of developing a residential cum commercial project in Mohali. In April 2006 it had assured the Informant to handover possession within 3 years and thereafter, gave a fresh commitment of completion within another 2 years from the date of bhoomi poojan i.e. 22<sup>nd</sup> January, 2008 but there was no sign of completion of the project even after elapse of further four years since then.

4. The Informant also averred that a person desirous of booking a plot with the Opposite Party was required to accept the onerous and unilateral terms and conditions. OP had illegally and arbitrarily withheld the informant's money and thus, his right to access other builders for purchase of commercial plot in the relevant market had been vitiated. The consequence of the arbitrary action of OP resulted in denial of market access to the informant under Section 4(2)(C) of the Competition Act, 2002 and the same constituted abuse of dominant position under section 4(1) of the Competition Act, 2002.

5. I have carefully considered the above allegations and am of the view that prima facie it is a case of abuse of dominance. I have already held in the case of DLF that when a buyer decides to buy a flat or property he has the choice of going to a large number of builders for this purpose and by and large there is a competition in the market. But when a consumer makes a choice and enters into an agreement with a builder he falls into his trap as there is information asymmetry in this market and also because all the elements of the agreement are neither understood by the consumer nor explained by the builder about its consequences. As a result if a consumer wants to switch over to another builder because of unfair and discriminatory clauses in the agreement, he cannot as he has to pay high switching cost. I have also held that the builders/developers automatically acquire dominance the moment agreement is signed with the consumers.

6. My view was based on the US Supreme Court's decision in the case of Eastman Kodak where a concept of 'aftermarket abuse' was given. According to the US Supreme Court, there were two markets i.e. a primary market where the





OP may not be a significant player and the secondary market where the OP becomes a dominant player by virtue of signing agreement with consumers for sale of the property or after sales or service. In the present case also there are two markets. The first market is the market of real estate where Taneja Developers and Infrastructure Ltd. (TDI) is operating like any other builders/developers. TDI may or may not be a dominant player in that market which is a subject matter of investigation, but when the Informants entered into agreements with TDI, TDI automatically acquired dominance and by acquiring dominance the TDI was in a position to affects its competitors or consumers or the relevant market in its favour as the customer becomes a 'captured customer' and he could be discriminated and abused at the will of the builder. Considering these facts, there is material to hold that prima facie there is contravention of the provisions of Section 4(2)(a)(i) & (ii) of the Act.

7. I have also held in the case of DLF that once the abuse of dominance is established and it is also established that the dominance came due to the agreements which the information providers had entered into with the OP, the question which arises is to whether the action of the OP creates an adverse effect on competition in India. In my view, whenever there is an abuse of dominance due to unfair conditions in the agreements, it creates an adverse effect on competition in India. Further in this case, the contracts entered into by the information providers were contracts of adhesion and the agreements entered were between a very big economic player and small time buyers. In fact the agreements were signed in the format given by the OP and the consumers had paid substantial sums of money to the OP. Thus if a buyer wanted to shift to another builder, he would have lost substantial amount of money. In such a case where the number of buyers was limited, a new entrant in the building market would have got no buyer even if the new builder was more innovative or had better products. Thus, the high switching cost would foreclose the market for a new builder. The agreements entered into by the OP and the prospective buyers, therefore, created an adverse effect on competition in India. The agreements therefore contravene Section 3(1) of the Act read with Section 3(2) of the Act.

8. Again in the case of M/s Tulip Infratech Pvt. Ltd. (case no.59 of 2011) the Commission has held vide its Order u/s 26(1) of the Competition Act, dated



15.12.2011 that "certain practices carried on by real estate developers building residential apartment complexes, including such practices as alleged in the information are being commonly carried on by many real estate developers or builders of residential apartment complexes in India. It seems that in particular two broad practices viz., (a) the practice of having a potential buyer sign an agreement which is not the final agreement, however it locks them and their initial investment with the builder without having been presented the complete terms and conditions of sale of apartment in a fair and transparent manner; and (b) the practice of making changes to the terms and conditions, facilities, structure of apartment/project after the customers are locked in, are being carried on by most of such real estate developers and builders of residential apartment complexes in India. Allegations of misrepresentation and consequential actions may relate to breach of contract in individual cases, however, the manner in which such practices are carried on across the board, is indicative of absence of independent actions of the developers. Hence it is necessary to consider whether such practices would be subscribed to/ carried on by the real estate developers or builders of residential apartment complexes, if they were in fact operating in a competitive manner. On a preliminary consideration, it appears difficult that such practices could be present across the board and be carried on commonly by the real estate developers in a competitive market. Prima facie it also appears that these practices carried on by the real estate developers or builders of residential apartment complexes are indirectly determining the sale prices in the market of the services relating to real estate providing by them and also potentially limits the provision of such services. Thus, in view of the above and on a careful perusal of the informations/ complaints, the various practices adopted by the builders as assailed in the informations/ complaints prima facie appear to be anti-competitive.

9. Thus, I am of the opinion that there exists a prima facie case to direct the Director General (DG) to cause an investigation to be made into the matter.

10. Secretary is directed to inform all concerned accordingly.

**Certified True Copy**



*Sd/-*  
(R. Prasad)  
Member