

COMPETITION COMMISSION OF INDIA

Case No. 22/2012

6th Sep, 2012

Dr. Deepa Narula

Informant

C/o Mr. Prashant Narula

B-1/602 A, Janak Puri

New Delhi- 110058

Taneja Developers and Infrastructures Ltd.

Opposite Party

9, Kasturba Gandhi Marg

New Delhi – 110001

Order under Section 26 (2) of Competition Act 2002

The instant information has been filed by Dr. Deepa Narula (Informant) u/s 19(1) (a) of the Competition Act, 2002 ('the Act') against M/s. Taneja Developers and Infrastructures Ltd. (Opposite Party) alleging abuse of dominance position by OP.

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. 22nd 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. In order to determine whether an enterprise is abusing its dominant position or not, it is necessary to first determine the relevant market in which that particular enterprise was alleged to be in a dominant position. The second issue would be whether the enterprise abused its dominant position in any manner in that relevant market in terms of Section 4 of the Act.

6. The relevant product market in this case would be "services provided by developers of apartments to the consumers" and the relevant geographic market would be geographic area of the district of Mohali, Punjab. Section 2(t) of the Act defines a "relevant product market" as a market comprising of all such products which are regarded as interchangeable or substitutable by the consumer, by reason of characteristics of the products or services, their prices and intended use. For a consumer the services of developers of residential cum commercial projects in the geographic area must be interchangeable



characteristics, price or intended use and consequently, for a consumer services provide by developers of such similar apartment projects in Mohali are interchangeable, within the given price band. Therefore, the relevant product market and the relevant geographic market, the relevant market would be "the market for services provided by developers of apartments to the consumers in the geographic area of district Mohali, Punjab."

7. The dominant position of any developer depends upon various factors like its share in the relevant market, size and resources of the enterprise, economic power of the enterprises, consumers of the enterprise, the nature of projects being handled by it by it and other factors enumerated in section 19(4) of the Act. Section 4 of the Act which deals with abuse of dominance for enterprises in India was notified in May 2009. Thus acts of abuse by dominant enterprises prior to the period of May 2009 cannot be considered by the Commission and is beyond the jurisdiction of the Commission. Abuse of dominance by enterprises can be considered the commission, only where such acts of abuse, occur after May 2009, when the relevant provisions of the Act, dealing with abuse of dominance, has been brought into effect.

8. It is noted that TDI City Mohali-I project is spread over an area of 200 acres approx. and TDI City – II is spread over an area of about 150 acres. TDI group is a noted player in real estate business with its completed/ on going projects/ townships at Kundali, Sonapat, Gurgaon, Panipat, Mohali, Moradabad, Meerut, Indore, Agra etc. It is also a fact that there are other real estate players having significant presence in the relevant market, e.g. Pearls Infrastructure with a mega township spread over an area of 500 acres.

9. It is stated by informant that on payment of booking amount and subsequent instalments, informant became captured customer with little choice of exit, thus OP should be considered as a dominant enterprise. Dominance of an enterprise is to assessed on the basis of its market share and strength vis a vis other players in the relevant market and not vis a vis customer. The plea is therefore untenable.

10. It is noted from information available in public domain that in Mohali, there are various ongoing commercial projects of developers like Unitech, Bestech, C&C Mohali Junction, Pearls Infrastructure, Emaar MGF, Parsvnath Developers, Shapoorji Pallonji & Co. Ltd. etc., besides that of the OP.

11. On the basis of the information stated above, it can not be said that OP was a dominant player in the relevant market. There is no other material on record to show that the OP was a dominant player in the relevant market.



12. 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 TDI in the relevant market does not get established. The Commission accordingly holds that prima facie no case was made out for directing the Director General (DG) under Section 26(1) of the Act to conduct investigation into the matter.

13. In view of foregoing, the Commission deems it fit to close the proceedings of the case under Section 26(2) of the Act.

14. The Secretary is directed to communicate the decision of the Commission to the informant accordingly.

Sd/-
Member (G)

Sd/-
Member (AG)

Sd/-
Member (GG)

Sd/-
Member (T)

Sd/-
Member (D)

Sd/-
Chairperson

Certified True Copy



S. P. Gahlaut
14/09/2012
S. P. GAHLAUT
Assistant Director
Competition Commission of India
New Delhi