



(Case No. 25 of 2013)

In Re:

DLF City Club Members Welfare Association

Informant

S-15/1, DLF City Phase-III, Gurgaon

And

DLF Recreational Foundation Ltd.

Opposite Party No.1

Gate Way Tower, DLF Phase-II, Gurgaon, 122 002.

M/s DLF Ltd.

Opposite Party No.2

DLF Centre, Sansad Marg, New Delhi – 110001.

Financial Commissioner & Principal Secretary, Town & Country Planning Department, Government of Haryana, Chandigarh.

Opposite Party No.3

Director, Town & Country Planning, Headquarters, Government of Haryana, Sector – 18, Chandigarh.

Opposite Party No.4

Administrator, Haryana Urban Development Authority
HUDA Building, Sector-14, Gurgaon – 122 001

Opposite Party No.5

The Director, Town Planning,
HUDA Complex, Sector – 14, Gurgaon – 122 001.

Opposite Party No.6

CORAM:

Mr. Ashok Chawla
Chairperson

Dr. Geeta Gouri
Member

Mr. Anurag Goel
Member

Mr. M. L. Tayal
Member

Mr. Justice (Retd.) S. N. Dhingra
Member

Mr. S.L. Bunker
Member

Present: Shri R.D. Makheeja, Advocate for the Informant.



Competition Commission of India



ORDER UNDER SECTION 26 (2) OF THE COMPETITION ACT, 2002

The present information was filed under section 19(1) (a) of the Competition Act, 2002 ('the Act') by the informant against the opposite parties alleging *inter alia* contravention of the provisions of section 4 of the Act.

2. The informant is an association of members of 'DLF city club' registered under the Haryana Registration and Regulation of Societies Act, 2012. DLF City Club is run and managed by opposite party No. 1. (the OP1)

3. The opposite party No. 1 is stated to be established by the sister entities/ concerns of DLF Ltd. OP-2 is the ultimate holding company of OP1 and engaged in development of residential, office, commercial and retail properties. Opposite party No.3 is the Head of the Department of Town and Country Planning, Government of Haryana. Opposite party Nos. 4 to 6 (the OPs 4 to 6) are the authorities set up by the Government of Haryana under the Haryana Development and Regulation of Urban Areas Act, 1975 and the Haryana Development and Regulation of Urban Areas Rules, 1976.

4. The informant averred that when members of the association applied for allotment of residential plots/ flats in the residential colonies developed by the OP 2, they were promised the facility of a club as a part of community services *via* advertisements in newspapers and tentative layout plans attached to and forming part of Apartments/ Plots Buyers Agreement. It was stated that the cost of the land required for community services was loaded in the cost of land/ flat for developing community services for the exclusive use of the residents. However, instead of establishing a club as a part of community services to be managed by the members through a Managing Committee, elected by the Members, the OP was running the club like a Hotel, with misnomer of 'The City Club.'



5. It was alleged that 'The City Club' was being run as a commercial enterprise and a profit centre, to make huge profits by charging exorbitant membership fee and other charges. The annual subscription fee for existing members was increased exponentially from Rs. 6,000 to Rs. 18,000 within a period of 3 years. The members of the Club, resident of DLF colonies & the biggest stakeholders, had absolutely no say in the management of the affairs of the Club, though the Club was on their land as a part of community services in terms of the provisions of the Haryana Development and Regulation of Urban Areas Act, 1975 and the Rules of 1976 framed thereunder.

6. The Informant stated that though there were other clubs established by other promoters/ developers, the residents of DLF colonies were not allowed to become members of such other clubs in routine but only at the discretion of those clubs and that also on payment of additional charges, being non-residents of the colonies developed by those promoters/ developers.

7. It was further averred that 'The City Club' in Phase-IV along with other two clubs in Phase-III and Phase-V, were owned and run by the OP's 1 & 2 and therefore they enjoyed dominant position in the relevant geographical and product market. Thus dominance was being abused by them by charging exorbitant membership fees and fee for use of various facilities like gym *etc.* with continuous increase from year-to-year without any rationale. Also some of the rules and regulations of the club to be mandatory signed by the members were highly one-sided and unfair to the members, being heavily loaded in favour of the OP 1 & 2. The informant made reference to such clauses which vested sole authority in the management to revise the fees or other charges at any time and such revision was to become binding; the sole and absolute right of the club to establish, add, remove and modify different membership types and to modify the rules and regulations governing access and guest privileges with respect to the club facilities; arbitration clause and; interest free security clause *etc.*

8. The Commission considered the information & the material placed on record, including written submissions.

9. In order to examine the allegations of abuse of dominance, first the relevant market is to be identified. The informant has not stated anything about relevant market in the information. The informant is basically aggrieved by the alleged abusive conduct of OP's 1 and 2 in running and managing 'The City Club'. A club normally provides to its members recreational facility, Bar, food



court& guest rooms, indoor games etc. Considering the interchangeability and substitutability of these kinds of services, their price and intended use ‘the provisions of recreational& other facilities through clubs’ would be the product market. City of gurgaon would be appropriate geographic market since such facilities are generally preferred and availed by residents in nearby places preferably within municipal limits of the city in which they live. As such the Commission considers that ‘*the provision of recreational facilities through a club in Gurgaon*’ would be appropriate relevant market in this case.

10. In order to attract the provisions of section 4 of the Act, the dominance of the enterprise needs to be examined under explanation (a) to section 4 of the Act with due regard to the factors mentioned under section 19(4). It is pertinent to note that the informant has not averred how the OPs were in a dominant position in the relevant market. As per the information available in public domain, it is observed that there are many clubs in the city of Gurgaon. There are the clubs developed by the developers for the benefit of the residents of the apartments/ townships built by them.

Use of these clubs is also open to non-residents, *albeit* at a differential fee. There are also standalone clubs, open to public at large for membership. Besides, some clubs also operate from hotels and their membership is also open to all subject to fulfilment of eligibility conditions. There are also clubs maintained by (HUDA) in Gurgaon. Specifically, following are the clubs operative in the city of Gurgaon: Country Club, Ansal Chancellor Club, HUDA Gymkhana Club, Palm Club, Rotary Club, Unitek Pioneer Club, Unitech Country Club and Resort Country Club, Body Nation, NHIPL, The Maple, The Palms *etc.*

11. From the above, it is seen that a number of players are operating in the relevant market, and the services of a club are available to the consumers in Gurgaon as per their choices/ preferences.

12. In view of the above market construct, OP’s 1 and 2 cannot be said to be dominant in the relevant market.

13 Since, dominance of OP’s 1 and 2 in the relevant market is *prima facie* not there, so there can be no issue of abuse of dominance. The Commission finds that no *prima facie* case is made out for directing the Director General to carry out investigation into the matter under Section 26(1) of the Act. However, non-implementation of provisions of Haryana Development& regulations of Urban Areas Act or the regulations framed thereunder by OP 3 to OP 6 is altogether different matter and informant is free to initiate independent proceeding before appropriate forum against opposite parties.



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

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

New Delhi

Dated 01.07.2013

Sd/-
(Ashok Chawla)
Chairperson

Sd/-
(Dr. Geeta Gouri)
Member

Sd/-
(Anurag Goel)
Member

Sd/-
(M. L. Tayal)
Member

Sd/-
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