



COMPETITION COMMISSION OF INDIA

Case No. 13 of 2016

In Re:

**Shri Vinay Kala and Smt. Mina Kala
03, I. T. Flats, Havelock Road,
Opposite of Veterinary Hospital,
Lucknow - 226001.**

Informants

And

**DLF Ltd.
DLF Shopping Mall, 3rd Floor,
Arjun Marg, DLF City Phase -1,
Gurgaon - 122002.**

Opposite Party

CORAM

**Mr. Devender Kumar Sikri
Chairperson**

**Mr. S. L. Bunker
Member**

**Mr. Augustine Peter
Member**

**Mr. U. C. Nahta
Member**

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Dr. M. S. Sahoo

Member

Appearances: *For the Informant* Shri F. K. Jha, Senior Advocate
Shri Shashank A. Singh, Advocate

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

1. The information in the present case was filed by Shri Vinay Kala and Smt. Mina Kala (collectively, hereinafter referred to as the '**Informants**') under Section 19(1)(a) of the Competition Act, 2002 (hereinafter referred to as the '**Act**') against DLF Ltd. (hereinafter referred to as the '**Opposite Party**'/ '**OP**') alleging, *inter alia*, contravention of the provisions of Sections 3 and 4 of the Act.
2. As per the information, the Informants *vide* their application dated 05.01.2012 had applied for allotment of a 300 sq. yd. residential plot in the residential township project 'Garden City' launched by OP at Village - Purseni, Tehsil - Mohanlalganj, District - Lucknow, Uttar Pradesh.
3. The Informants were allotted a plot bearing No. B-52 *vide* plot allotment letter dated 15.10.2012 duly signed by both the Informants and OP (hereinafter referred to as the '**Allotment Letter**') for a total consideration of Rs. 46,57,356/- and other specified charges. It is further stated that the Informants had paid 95% of the cost of the said plot as per payment plan in the



‘Allotment Letter’. The possession of the plot was given on 21.11.2015, after delay of nearly 20 months.

4. The Informants have alleged that OP has violated the provisions of Sections 3 and 4 of the Act. As per the Informants, OP’s conduct is alleged to be anti-competitive and abusive for the following reasons: (i) OP did not honour its commitment to pay compensation for its delay in offer of possession, (ii) published misleading information on its website, (iii) did not give a copy of the completion certificate, (iv) sought upfront payment for five years as membership fee for a club yet to be built, (v) imposed interest at the rate of 15% to 18% per annum with quarterly interest if allottee does not make payment as per payment plan but compensation payable to the Informants is Rs. 42/- per sq. yd. (which works out to be 3.42% on the amount paid by the Informants) if the offer of possession is not made within the stipulated time, (vi) OP to forfeit the earnest money paid by the Informants in case of non-fulfilment of the terms and conditions of the ‘Allotment Letter, (vii) OP has the right to change the layout plan without the Informants’ consent, (viii) OP to appoint sole arbitrator, *etc.*
5. Aggrieved by the above said alleged anti-competitive and abusive conduct of OP, the Informants have prayed to the Commission to direct OP to refund the money paid by them and also to pay a compensation of Rs. 50 Lakhs.
6. The Commission has perused the material placed on record and also heard the Informants on 07.04.2016. From the information, it appears that the Informants, *inter alia*, are aggrieved by the conduct of OP in imposing unfair terms and conditions in the ‘Allotment Letter’ and not delivering the possession of the plot in a timely manner which is in contravention of the provisions of the Section 4 of the Act.



सत्यमेव जयते



7. With regard to the allegations of abuse of dominant position by OP, it may be noted that, as per the scheme of the Act, the position of dominance of an enterprise is to be seen in the context of a relevant market within which such enterprise is alleged to be abusing its dominant position. Accordingly, it is essential to first determine the relevant market in the instant case and then to examine whether OP is dominant in that relevant market or not.

8. The allegations of the Informants in the present matter relate to purchase of a residential plot in 'Garden City', a residential plotted township project of OP located at Mohanlalganj Tehsil in Lucknow district of Uttar Pradesh. Thus, the relevant product in question is a residential plot. The Commission notes that the requirement, scope and prospect of a residential plot are different from that of a residential apartment. Residential plots form a separate relevant market since the motive of buying and factors considered for buying a residential plot by the consumers are different from that of a residential apartment. In case of residential plot, unlike residential apartment, where the real estate developer completes the construction of the apartment before the possession is given to the allottee, the buyer of a plot has the freedom to decide the floor plan, the structure, and other specificity subject to applicable regulations. Thus, the buyers wishing to purchase a residential plot may not prefer to substitute it with a residential apartment and *vice versa*. Accordingly, keeping in view the substitutability and characteristics of services, their prices and intended use, the relevant product market in this case may be considered as the market for "*the provision of services for development and sale of residential plots*".

9. The Informants have identified the area of Mohanlalganj/ Rae Bareilly Road in the city of Lucknow as the relevant geographic market. This narrow geographic area has been selectively identified by the Informants at their convenience so as to establish OP as a dominant player in the said relevant



market. There are various residential projects in Lucknow other than the projects along the Rae Bareli Road which can be considered by consumers desirous of purchasing a residential plot. The distance is also not a factor that would restrict the consumer from exploring similar options in any area of Lucknow. The Commission notes that geographic region of Lucknow exhibits homogenous and distinct market conditions as compared with those prevailing in adjacent areas of Lucknow. The consumers looking for a residential plot in the said geographic area may not prefer other neighbouring areas because of the factors such as level of urban development, price, distance *etc.* Further, the consumers may not switch to other areas with a slight increase in the price of the plots because of factors such as consumer preferences, urban infrastructure facilities, transport services *etc.* Therefore, the relevant geographic market in this case may be considered as '*the geographic area of Lucknow*'.

10. Based on the relevant product market and the relevant geographic market defined *supra*, the relevant market in the present case may be defined as the market for '*the provision of services for development and sale of residential plots in Lucknow*'.
11. The underlying principle in assessment of dominant position of an enterprise is linked to the market power of the enterprise in question which allows an enterprise to act independently of competitive constraints. Such independence affords an enterprise with the capacity to affect the relevant market in its favour and to the economic detriment of its competitors and consumers. In the present case, based on the information available in the public domain, it is observed that OP has only one project offering residential plots in Lucknow. Apart from this project OP has only one other project in the city. It is noted that there are many other real estate developers such as Ansal API, Shalimar, Shinecity, Eldeco, Swaraaj Infra Estate & Allied Ltd. *etc.* offering similar kind



of services in the city of Lucknow. It is noted that all the above developers are competing with each other in the relevant market with projects of varying magnitudes and have comparable size and resources as that of OP. The presence of a number of players in the relevant market indicates that the buyers have options to choose residential plot from other developers. With such renowned builders in the relevant market, it does not appear that OP enjoys a position of strength which enables it to operate independently of competitive forces prevailing in the relevant market or to affect its competitors or consumers or the relevant market in its favour.

12. Since the Opposite Party is not in a dominant position in the relevant market, the question of abuse of a dominant position by it within the meaning of the provisions of Section 4 of the Act does not arise. Accordingly, no case of abuse of dominance in terms of Section 4 of the Act is made out against the Opposite Party in the present matter.
13. With regard to the contravention of Section 3 of the Act in the matter, the Commission notes that the allegation of the Informants does not hold any ground as the information does not disclose any kind of agreement which can be termed as anti-competitive in terms of any of the provisions of Section 3 of the Act.
14. In the light of the above analysis, the Commission finds that no case of contravention of the provisions of either Section 3 or Section 4 of the Act is made out against the Opposite Party in the instant matter.



15. Accordingly, the case is ordered to be closed under the provisions of Section 26(2) of the Act.

16. The Secretary is directed to communicate to the Informant accordingly.

Sd/-

(Devender Kumar Sikri)

Chairperson

Sd/-

(S. L. Bunker)

Member

Sd/-

(Augustine Peter)

Member

Sd/-

(U. C. Nahta)

Member

Sd/-

(Dr. M. S. Sahoo)

Member

New Delhi

Dated: 05.07.2016