



COMPETITION COMMISSION OF INDIA

Case No. 112 of 2015

In Re:

**Shri M. M. Mittal
DGO-238, 2nd Floor
The DLF Galleria
Mayur Vihar, Delhi**

Informant

And

**M/s Paliwal Developers Ltd.
9th Floor, DLF Centre
Sansad Marg, New Delhi**

Opposite Party

CORAM

**Mr. Devender Kumar Sikri
Chairperson**

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

**Mr. Sudhir Mital
Member**

**Mr. Augustine Peter
Member**



Mr. U. C. Nahta
Member

Mr. M. S. Sahoo
Member

Justice G. P. Mittal
Member

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

1. The information in the present matter was filed by Mr. M. M. Mittal (hereinafter referred to as the '**Informant**') under section 19(1)(a) of the Competition Act, 2002 (hereinafter referred to as the '**Act**') against M/s Paliwal Developers Ltd. (hereinafter referred to as the '**Opposite Party**'), *inter alia*, alleging contravention of the provisions of section 4 of the Act.
2. As per the information, on 15.07.2010 the Opposite Party agreed to sell an office space bearing no. DGO-238 in The Galleria DLF, Mayur Vihar, New Delhi admeasuring 3879 sq. ft. for a total consideration of Rs.3,87,90,000/- to the Informant. Apart from the said sale consideration, the Informant was to make a payment towards maintenance security calculated @ Rs.500/- per sq. ft. of the area for the said office. It has been stated that the Opposite Party did not get any agreement executed between the parties but merely asked for 25% of the entire sale consideration with the balance to be paid in three equal instalments of 25% each within a period of six months. Also, the Informant was asked to pay the maintenance security deposit on payment of the entire sale consideration, after which possession was to be handed over.



3. It has been stated that a payment of Rs.97,07,500/- was made by the Informant on 15.07.2010 itself and the Opposite Party had issued a receipt for the same and confirmed the sale of the aforesaid office space *vide* letter dated 17.07.2010. According to the schedule attached to the said letter, the entire sale consideration was payable in four equal instalments within a period of 6 months commencing from 15.07.2010. The Informant, however, made the payment of the entire balance amount on 02.08.2010 for which the Opposite Party granted an early payment rebate also. The Informant also made a payment of Rs.19,39,500/- @ Rs. 500 per sq. ft., in the name of DLF Utilities Ltd. towards the security deposit as per directions of the Opposite Party. Further, it has been averred that before the delivery of possession, the Opposite Party had also demanded certain amounts to be paid towards stamp duty, registration fee, ground rent, government taxes and house tax as pre-condition for the delivery of possession, which were also paid by the Informant on 26.04.2011.
4. It was alleged that after taking all the aforesaid amounts, the Opposite Party required the Informant to sign the Retail Space Buyer's Agreement ('RSBA'/'Agreement') by stating that the possession of the premises could be delivered only if the Informant signed the Agreement. Under the threat of non-delivery of the premises, the Informant signed the Agreement dated 29.04.2011 without looking at it and understanding the terms. It has been further alleged that the Opposite Party had also got few other documents signed at the same time. The Informant later understood that one of those documents was application containing terms and conditions of the allotment. All the said documents were signed in blank and necessary details were not filled therein. After signing of the Agreement, the Opposite Party delivered possession on the same day *i.e.*, 29.04.2011.
5. The Informant has averred that when the Opposite Party delivered the possession of the premises, the carpet area of the premises measured only



1850 sq. ft. *i.e.*, even less than 50% of the area agreed to be sold. The Informant had protested against the delivery of less area but to no effect. Further, despite the repeated requests and reminders, the Opposite Party did not get the sale deed executed and registered in respect of the said property in favour of the Informant. Furthermore, it has been stated that a frivolous dispute was raised by the Opposite Party *vide* its letter dated 09.02.2015 alleging that on final measurement, super area of the said premises had increased by 572 sq. ft. and an additional demand of Rs.65,57,308/- on account of alleged increase in super area was raised.

6. The Informant has alleged that the Opposite Party being a group company of M/s. DLF Limited has a dominant position in real estate market in the National Capital Region of Delhi and has abused its position in contravention of section 4 of the Act. The Opposite Party directly/ indirectly has imposed unfair and discriminatory conditions in the matter of sale of retail spaces at 'The DLF Galleria, Mayur Vihar'. Further, the Agreement was wholly one sided, onerous, oppressive and unfair including the terms and conditions relating to super area, maintenance of building, *etc.*
7. The Commission has perused the material placed on record. Since the present matter pertains to alleged contravention of section 4 of the Act, the position of dominance of the Opposite Party in terms of the Act needs to be determined. The position of dominance of an enterprise is, usually, with reference to a relevant market within which such enterprise is alleged to be abusing its dominant position. Accordingly, it is appropriate to first determine what the relevant market is and then examine as to whether the Opposite Party is dominant in that relevant market.
8. With regard to the relevant market, there are two aspects to be considered under the Act *i.e.*, the relevant product market and relevant geographic market. Considering the fact that the transaction between the Informant and the



Opposite Party was with regard to sale of a commercial space, the Commission is of the view that the relevant product market in this case is ‘the market for provision of services for development and sale of commercial/ office space’.

9. As regards relevant geographic market the Informant has stated that the Opposite Party is dominant in the National Capital Region (NCR) of Delhi. In this respect, it is noted that NCR comprises not only of national capital territory of Delhi but also other cities such as Faridabad, Gurgaon, *etc.* The Commission is of the view that the entire region of NCR cannot be said to be one market. If the sub regions in NCR like Ghaziabad, Faridabad or Gurgaon are compared with Delhi, it is apparent that the conditions of competition in the market for commercial/ office space in these sub regions are not homogenous with that of Delhi. The factors such as different regulatory authorities (and hence different rules and regulations), differential cost of land for development, prices of property, extent of urbanisation, commercial activity supported by the ecosystem, locational advantage for conducting business, availability of transportation/ travel facilities, the level of development of infrastructure, *etc.* are distinct for these sub regions. These factors play a crucial role in determining the consumer preferences and hence in determining the relevant market. Accordingly, NCR cannot be considered as one geographic market. Since the Informant was looking for a commercial office space in Delhi the relevant geographic market in this case would be considered as ‘Delhi’. Accordingly, the relevant market in the instant case is *‘the market for provision of services for development and sale of commercial/ office space in Delhi’*

10. As regards dominance, it is observed that the Opposite Party is a subsidiary of M/s DLF Limited and belongs to the DLF group. Accordingly, the dominance of DLF group in the said relevant market has been examined. The Commission notes that in Delhi, DLF group is just one of the real estate



developers and that there are many other real estate developers in Delhi offering similar services for development and sale of commercial/ office space. For instance, Delhi Development Authority, Omaxe, Parsvnath, Vatika, Ansal API, Unitech, BPTP, *etc.* which have commercial projects and pose competitive constraints to the Opposite Party.

11. Further, it is noted that, earlier in Case No. 85 of 2014 (*Ravinder Kaur Sethi v DLF Universal Limited & Ors.*), Case No. 50 of 2012 (*Shri Kaushal K. Rana v DLF Commercial Complexes Ltd.*) and Case No. 15 of 2012 (*Owners and Occupants Welfare Association v M/s. DLF Commercial Developers Ltd.*), the issue of abuse of dominance by the DLF group was alleged in the same relevant market, though the projects happened to be different. In those cases, the Commission opined that DLF is not dominant in the said relevant market and held that owing to the presence of other real estate developers with significant market power offering commercial office space, the buyer's were not dependent upon the Opposite Party for provisioning of office space. Thus, the Commission is of the view that there is no reason to deviate from its earlier finding and that the Opposite Party is not dominant in the relevant market '*for provision of services for development and sale of commercial/ office space in Delhi.*'
12. Since the Opposite Party Group is not in a dominant position in the relevant market, the question of abuse of a dominant position 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 Group in the present matter.
13. In view of the above, the case is ordered to be closed under section 26(2) of the Act.



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

Sd/-

(Devender Kumar Sikri)

Chairperson

Sd/-

(S. L. Bunker)

Member

Sd/-

(Sudhir Mital)

Member

Sd/-

(Augustine Peter)

Member

Sd/-

(U. C. Nahta)

Member

Sd/-

(M. S. Sahoo)

Member

Sd/-

(Justice G. P. Mittal)

Member

New Delhi

Date: 25.02.2016