



COMPETITION COMMISSION OF INDIA

Case Nos. 50, 51, 52, 53, 54 and 55 of 2016

In re:

Shri Abdul Waseem Informant (In Case Nos. 50 and 52 of 2016)

Shri Abdul Basit Informant (In Case Nos. 51 and 53 of 2016)

Shri Abdul Azim Informant (In Case Nos. 54 and 55 of 2016)

W-111, Greater Kailash-II, New Delhi

And

DLF Universal Ltd.

3rd Floor, DLF Shopping Mall,

DLF City, Phase-I, Gurgaon, Haryana

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**

**Justice G. P. Mittal
Member**



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

1. The informations in these cases have been filed by Shri Abdul Waseem (in Case Nos. 50 and 52 of 2016), Shri Abdul Basit (in Case Nos. 51 and 53 of 2016) and Shri Abdul Azim (in Case Nos. 54 and 55 of 2016) [collectively, hereinafter, '**Informants**'] under Section 19(1)(a) of the Competition Act, 2002 (the '**Act**') against DLF Universal Ltd. ('**OP**') alleging contravention of the provisions of Section 4 of the Act.
2. As per the informations, each of the Informants has booked one residential flat in each of the two residential projects *i.e.*, Regency Park and Richmond Park developed by OP in Gurgaon. For the apartments/ flats in Regency Park, the Builder Buyers' Agreements ('**Agreements**') were executed in 1995 and for the apartments/ flats in Richmond Park, the 'Agreements' were executed in 1996. The payment of the entire sale price for the Regency Park apartments/ flats were made till 1998-1999 and payment of the entire sale price for the apartments/ flats in Richmond Park were made till 2000-2001. It is averred that the OP did not handover the possession of the apartments to the Informants even after payment of the entire sale price. Instead, the OP demanded unjustified amounts towards holding charges and parking and threatened cancellation of the apartments in the event of non-payment.
3. It is alleged that the OP, *vide* letter dated 14.05.2003, has cancelled the allotment of the apartments allotted to the Informants in Richmond Park and forfeited the amount paid which is more than 75% of the entire sale consideration. The Informants thereafter filed complaints in this regard before the State Consumer Dispute Redressal Commission (SCDRC) of Haryana on 13.06.2003. SCDRC, in light of the 'Agreement' between the parties and failure of the Informants to make payments as per the terms of the 'Agreement' resulting in cancellation, allowed the OP to forfeit only the earnest money of the Informants.



4. Further, it is stated that the residential apartments in Regency Park project were booked in 1995 and possession of the same were offered by the OP *vide* letter dated 17.09.1999 subject to payment of outstanding dues and completion of paper work by the Informants. The Informants, *vide* letter dated 29.07.2000 sent some documents, photographs alongwith a part of the outstanding dues to the OP. Thereafter, *vide* letter dated 29.11.2000, OP asked the Informants regarding the balance amount and informed them that in the absence of payment of the balance amount, it cannot give possession of the apartments. It is averred that, *vide* letter dated 29.11.2000, OP returned the documents and photographs stating that the same had not been attested and in the meanwhile kept increasing the holding charges and interest thereon.
5. The Informants thereafter filed complaints in SCDRC on 14.08.2003 in this regard. In its order passed on 02.06.2006, SCDRC *inter alia* noted that the OP, in order to cover its deficiency of not completing the construction as promised, continued to detain the documents, photographs, *etc.* of the Informants for four months on one pretext or the other and increased the holding charges and interest thereon. Taking overall view of the matter, SCDRC allowed the complaint and *inter alia* directed the OP to handover possession of the flats to the Informants on payment of stamp duty and registration charges within one month. Aggrieved by the order of SCDRC, OP filed appeals before the National Consumer Dispute Redressal Commission (NCDRC) in all the cases. On 05.02.2015, NCDRC allowed the appeals and set aside the orders of SCDRC. Subsequently, the Informants filed Special Leave Petitions before the Hon'ble Supreme Court of India which were dismissed on 10.08.2015.
6. Further, in 2015, the Informants sent a legal notice to OP with respect to the apartments of both Regency Park and Richmond Park projects requesting for giving possession of the apartments and damages to tune of Rs. 40,00,000/-. However, OP declined the said request of the Informants and sent a cheque



vide letter dated 01.01.2016 to the counsel of the Informants towards the refund amount with respect to the apartments of Richmond Park. It is averred that the advocate to whom the cheque was sent was no longer the authorised advocate of the Informants and thus, the refund amount remains unpaid as the cheque has now expired. In case of the apartments of Regency Park, OP has also declined the request of the Informants for giving possession, *inter alia* stating that it had provided an opportunity to the Informants to pay the outstanding dues and take possession, but they have not paid the same.

7. The Informants have submitted that despite the fact that the Agreements were executed in 1995 for the apartments in Regency Park and in 1996 for the apartments in Richmond Park, which are prior to enforcement of the provisions of Section 4 of the Act, the Commission has the jurisdiction in the matter as the effect of the Agreements is still continuing. The Informants have stated the relevant market to be considered in this case as ‘the market for services of development and sale of residential plots and flats in Gurgaon’. It is submitted that OP, by virtue of its land bank, assets, infrastructure, size of business, volume of turnover, *etc.*, has gained a position of strength which enables it to act independently of its competitive forces and affect its competitors and customers in its favour in Gurgaon. As a result, despite the presence of other developers such as Emmar MGF Land Ltd., Unitech, Vatika Ltd., Bestech Indian Pvt. Ltd. *etc.* in the real estate space in Gurgaon, OP is in a dominant position in the relevant market as stated above.
8. It is alleged that OP has abused its dominant position by imposing hidden costs and onerous conditions on the buyers through the Agreements. Further, post 2009 conduct of OP in raising wrong and unjustified demands by misinterpreting the clauses of the Agreements, unjustly retaining and appropriating the amount of the Informants, *etc.* shows that it has abused its dominant position *vis-a-vis* the Informants.



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9. In view of the aforesaid, the Informants have prayed the Commission to direct the OP to: modify the terms and conditions of the application forms for allotment of apartment and the Agreements; to deliver the possession of the apartments or alternatively refund the amount paid by the Informants alongwith interest at the rate of 20% per annum; to pay the cost of the proceedings; and to pass such other order(s) as the Commission may deem fit and proper in the facts and circumstances of the case.
10. The Commission has perused the information and other material available on record including the additional information submitted by the Informants on 10.08.2016 including the orders of NCDRC, the Monopolies and Restrictive Trade Practices Commission and the Hon'ble Supreme Court of India relating to the aforesaid disputes between the Informants and the OP.
11. The Commission notes that the primary issue for consideration in these matters is whether these cases fall within the temporal jurisdiction of the Commission considering that the apartments/ flats were booked/ purchased in 1995-1996 and the alleged abuse of dominance relating to forfeiture of amount paid by the Informants, demanding holding charges and non-delivery of possession of the apartments booked by the Informants, *etc.* arose at a time when the provisions of the Act were yet to be enforced. The Informants have argued that their case would fall within the jurisdiction of the Commission as the effects of the Agreements are still continuing as the OP has neither delivered the possession of the apartments nor refunded the amount deposited by them with interest till today.
12. On the aforesaid issue, the Commission observes that in order to assess the allegation of abuse of dominance by OP under Section 4 of the Act, the Commission would have to first assess the dominance of OP. Such assessment would require considering the choices that were available to the consumers/ Informants at the time of booking/ purchase of apartments. Since in the



present cases, the apartments were booked/ purchased in 1995 and 1996, this assessment would have to be made for a time when the Act was not in force. Further, as regards the abuses alleged by the Informants, it is noted that these also pertain to the period prior to enforcement of the Act. In case of apartments allotted to Informants in Regency Park in 1995, the possession was offered by the OP *vide* letter dated 17.09.1999, subject to payment of outstanding dues and completion of paper work by the Informants, and subsequently, when Informants did not fulfil these obligations, holding charges were imposed by OP in terms of that letter from 05.02.2000. Thus, abuse, if any, in these cases, were made at a time when the Act was yet to be enacted. Similarly, in case of the apartments booked by the Informants in Richmond Park in 1996, OP had cancelled the allotment and had forfeited the amounts paid *vide* its letter dated 14.05.2003. Thus, in these cases also, the alleged abuse were made prior to enforcement of Section 4 of the Act. Given these facts, the Commission is of the view that, if the Commission were to make an assessment of dominance or alleged abusive conditions imposed by OPs in the present cases, such assessment would essentially relate to a time when either the Act itself was not enacted or Section 4 of the Act was not in force.

13. It may also be noted that the Informants had admittedly moved the State Consumer Dispute Redressal Forum in 2003, contested the appeal in National Consumer Dispute Redressal Commission and also moved Special Leave Petitions in the Hon'ble Supreme Court previously for seeking redressal of the grievances arising out of the Agreements which are subject matter of the present information. It is thus, clear that the Informants have approached the Commission only as an afterthought after their petitions were dismissed by the Hon'ble Supreme Court.



14. In view of the above discussion, the Commission is of the opinion that no *prima facie* case of contravention of Section 4 of the Act arises in the facts and circumstances of the aforesaid cases and the matters are closed forthwith in terms of the provisions of Section 26(2) of the Act.
15. The Secretary is directed to communicate to the Informants 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/-

(Justice G. P. Mittal)
Member

New Delhi
Dated: 05.12.2016