

Competition Commission of India

[Case Number: 29/2012]

27/11/2012

Informant:

DGCOM Buyers & Owners Association, Chennai

Opposite Parties (OP):

1. M/s DLF Limited, New Delhi
2. M/s DLF Southern Homes Pvt Limited, Chennai

Order under Section 26(1) of the Competition Act, 2002

As per Dr.Geeta Gouri, Member

The Information has been filed by the Informant under section 19(1)(a) before this Commission for alleged abuse of dominance by the OP in the relevant product market defined as ‘premium apartment high-rise building built in Spanish style in gated township with international standard facilities’ located in the relevant geographic market of ‘IT Express Corridor, Chennai’.

As submitted, the Informant is an association registered under the Society Registration Act, 1860 with the object to express the common grievances and concerns of the allottees of the premium apartments in high rise building

project named 'Garden city DLF OMR' located at Thazhambur, Off-Old Mahabalipuram Road, Chennai being developed by the OP.

As regards OP, the Informant has cited former's Red Herring prospectus filed before SEBI wherein it has been stated that it is the largest real estate development company in India. The informant has submitted that the present project of the OP having about 3500 and built over 58 acres was the first biggest project not only in the OMR IT-Corridor but also in the entire Chennai city. On the basis of the above, the Informant is of the view that OP is dominant player in the relevant market. The Informant has also submitted that the very fact that OP could impose extremely one-sided and highly unfair conditions through its Apartment Buyers Agreement proves that DLF is a dominant enterprise. The Informant has further averred that although any of the factors enumerated under section 19(4) is sufficient for establishing the dominance of an enterprise, in the present case atleast six of the thirteen factors are fully established. Further, the Informant has referred to the Order of the Commission dated 12.08.2011 in Case No 19 of 2010 wherein the dominant position of the OP has been held.

The allegation in the present case pertains to abuse of dominant position by way of imposing highly arbitrary, unfair and discriminatory conditions on the allottees in the housing project, which have been adequately brought out in the majority Order.

Having taken cognizance of the Information and oral submissions of the Informant, the Commission, at this stage, is required to take a prima facie view whether it is a fit case to be referred to the Director General for causing an investigation for violation of provisions of the Competition Act, 2002. Towards this end, it is important to understand the nuances of the real estate sector.

Real estate sector, as we generally understand, is the act of developing and constructing buildings and includes both business and residential properties. In recent times, the residential real estate has manifested itself in a number of ways like bungalows, independent floors, low rise flats, high rise apartments (with or without other infrastructural facilities) etc. Within each such category, price varies to considerable extent depending on various factors like type of construction (luxury or otherwise), geographical area within which the dwelling unit is situated, connectivity with other areas, access to civic amenities, among others. Yet another distinction has been in terms of gated township and the facilities / amenities within the housing complex. As a result, there is a unique demand for each of the category of dwelling units in an area. Further, depending on the availability of a particular category of dwelling unit in a specific area, the consumer preference schedule might exhibit properties of substitutability with other categories of houses in the same or adjacent geographical area.

The informant has stated that reference to any one of the factors in Sec. 19(4) is sufficient to establish the dominance of the enterprise and in this case six of the thirteen factors are present. Of significance to note, is that while there may be a number of developers operating in the OMR region and OP1 and OP 2 may not be dominant in the region, the nation-wide size and strength of the OP's is sufficient to make them dominant in any part of India. This needs examination by the DG.

In short, from the lens of competition, from the point of view of 'relevant market' and of 'dominance' the correct delineation of relevant market, at the

prima facie stage, is a difficult call. In view of this and the peculiarities of realty as brought out above along with the submissions of the Informant on dominant position of the OP in the relevant market, I am of the view that this is a fit case under section 26(1) to be referred to the Director General for causing an investigation into the allegation of abuse of dominance by the OP.

The Secretary s directed to inform all concerned accordingly.

sd/-

(Dr. Geeta Gouri)

Member