

COMPETITION COMMISSION OF INDIA

Case No. 29/2012

27/11/2012

DGCOM Buyers & Owners Association, Chennai Informant

Vs.

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| 1) M/s. DLF Ltd., New Delhi | OP 1 |
| 2) M/s. DLF Southern Homes Pvt.Ltd., Chennai | OP 2 |

Order under section 26(2) of Competition Act, 2002

1. The informant in this case is an association of buyers and flat owners in a housing project of OP2. This housing project is situated at Old Mahabalipuram Road, IT Express Corridor, Chennai. The contention of the informant is that OP2 was a group company of OP1 as OP1 was having 51% share in OP2 and OP2 had entered housing market on OMR IT Corridor in December, 2007/January, 2008 in the segment of 2/3 BHK with a basic price of Rs.2800 per sq.ft. as against prevalent market rate of Rs.3000-3300 per sq.ft. The project launched by OP2 was the first biggest project in the entire Chennai city as it offered approx. 3500 units in 42 towers of 19 floors each. It was proposed to be a gated township with an area of 58 acres.

2. It is alleged that after nearly 18 months booking of the flats, when the allottees had already paid crores of rupees, OP2 asked the allottees to sign an agreement which contained highly abusive clauses. The abusive sweep of agreement was so deeply entrenched that the buyers could not whisper a word proposing changes in the agreement and were forced to sign on the dotted lines or to lose hefty amount. OP2 rejected the representations against this one sided agreement and throttled the voice of

the buyers by arrogating to itself unbridled discretion to change the lay out plan/building plan without consent of the allottees. Since the helpless allottees were on the receiving end of the abusive docket of OP2, their association has filed this information about abuse of its dominant position by OP2.

3. The informant has given data of other developers and information about other projects in that corridor and had made an endeavour to show that the OPs as a group were in a dominant position in the relevant market. The informant was also heard through its counsel by the Commission before forming opinion.

4. In order to consider the dominance of an enterprise, it is essential to define the relevant market and see if the OPs were dominant in the relevant market.

5. The informant in its information has categorically stated that the residential apartments in the area of OMR IT corridor with a price of Rs.3000-3300 per sq.ft. is considered an exclusive geographic market on the OMR. (Para G, page 19). It is further stated that OMR IT Corridor constituted a distinct market for premier high rise building apartments in the form of gated township project (page 22).

6. A perusal of documents filed by the informant in respect of the project of OP2 would show that OP2 had launched flats in 4 categories with different super areas. The land of the project was stated to be 53.5 acres. The project was named as Garden City DLF OMR Chennai. Type I flats were 2 bed rooms and type II, III and IV category flats were 3 bed room flats of different super areas, some with servant quarters, some without servant quarters. The launching was done sometime in January, 2008; initial booking price was kept at Rs.2800 per sq.ft. At that time when project was launched by DLF, there were many other players in the geographic market who already had launched the project or were launching their projects. Some of the players named by informant are Olympia Opaline, L&T Eden Park, Mantri, Hiranandini Ambrosia A Square, Jain Housing – Inseli Park, Padur, Jain Housing – Spring Meadows, Thalmbur, TVH Quranyabay – Padur, Embassy Residency – Perumbakkam, Akshya Homes, Sabari Group Project, Isha Homes, Vasavi Housing, Vision spread, ETA Rosedale

Padur, Arihant Frangipani Puravankara Swan Lake Bollineni Hill Side, TVH Swasti etc.etc.

7. The informant has submitted that projects launched by other builders could not be compared with the project of OP2 since OP2 project was unique in itself as in that price range no other project was providing the facilities which OP2 project had promised. The other projects like Hiranandini, Bollineni Hill Side, were luxury apartment projects and thus could not be compared with OP2 project, either segment wise or cost wise. The projects of several other builders named in para above were also stated as not comparable since they were not gated projects and the land on which they were built was very less as compared to the land of project of OP2. The number of apartments built by other builders were also stated to be less as compared to OP2. It was also stated that OP2 had opened a school and the school of OP2 started functioning in the year 2009 itself and was currently having around 2000 students. While L&T had promised to open a school, but this school started functioning only in 2011. Thus OP2's project was not comparable to L&T project also. It is further submitted that for considering the relevant market, the rate of flats should be kept in mind and the geographic market to be taken into account should be only the stretch between two toll gates starting from Perumgudi to Egattur because the land value was quite different before and beyond the toll gates. In Perumgudi, value in 2009 was Rs.4312 per sq.ft of Multi storey apartments as per information of website of Magicbrick.com while in OMR the value was Rs.3634 per sq.ft. It is submitted that DLF with Rs.3493 units and price @ Rs.2800 per sq.ft. was having 100% market share of the relevant market as DLF was the only player in high rise premium apartments on OMR IT Corridor at this price. The two other players Olympia Opaline and L&T together were having approx. 1212 units. It is also submitted that apartments launched later than the launch of DLF also should not be considered.

8. It is pleaded that OP2 scored an edge over other competitors by pegging the price of Rs.2800 per sq.ft as against prevailing market rate of Rs.3200 per sq.ft. for similar high rise premium apartments segment. In February, 2009 DLF slashed the rate

of its apartments and offered the apartments at the rate of Rs.2500 per sq.ft. for initial customers and Rs.2550 per sq.ft. for subsequent customers.

9. It is thus sought to establish that OP2 was a dominant player in high rise premium apartments in the relevant market of OMR IT Corridor between two toll gates on this corridor.

10. Section 4 defines dominance as a position of strength enjoyed by an enterprise in the relevant market in India which enables it to operate independently of competitive forces prevailing in the relevant market or affects its competitors or consumers or the market in its favour.

11, The dominant position as envisaged by the Competition act relates to position of economic strength enjoyed by an undertaking within the relevant market which enables it to prevent effective competition being maintained on the relevant market by affording it a power to behave in a manner quite independent from its competitors, its customers and ultimate consumers. In order to consider a dominant position of an enterprise, the Commission has first to specify the relevant market which means 'relevant product market' and 'relevant geographic market' as envisaged in section 19(5) of the Act and then consider the status of the enterprise in that relevant market. While arguing the case before the Commission, the counsel for the informant submitted that the dominance of OP1 and OP2 should be considered looking into its total market strength pan India and not merely in the OMR IT corridor and once this dominance is established, then the market share of OP2 within OMR IT Corridor becomes irrelevant.

12. Section 19(5) of the Act clearly specifies that for determining whether a market constitutes a 'relevant market' for the purposes of this Act, the Commission shall have due regard to the 'relevant geographic market' and the 'relevant product market'. 'Relevant product market' is defined under section 2(t) of the Act as 'a market comprising of all those products or services which are interchangeable or substitutable by the consumer, by reason of characteristics of the products and services, their prices and intended use'. Furthermore 'relevant geographic market' is defined under section 2(s) of the Act as 'a market comprising the area in which the conditions of competition

for the supply of goods or provision of services or the demand of goods or services are distinctly homogenous and can be distinguished from the conditions prevailing in the neighbouring areas’.

13. In line with its previous decisions in the real estate sector and keeping in mind the provisions of sections 19(6) and 19(7) of the Act, the Commission is of the view that the relevant product market in this case is ‘the provision of services for development and sale of residential space’. As far as the relevant geographic market is concerned, the Commission is of the view that the relevant geographic market cannot be confined to the OMR IT corridor, as it has not been shown nor can be said that a decision to purchase an apartment in the OMR IT corridor is not easily substitutable by a decision to purchase a similar apartment in any other geographic area located within Chennai. Therefore, the informant’s contention of the geographic market being the OMR IT corridor is not acceptable. Based upon the factors of demand and supply substitutability, the relevant geographic area in this case would be the area comprising the entire geographic area of Chennai city. In view of the determination of relevant product market and relevant geographic market, the Commission holds that the relevant market in this case is ‘provision of services for development and sale of residential space in the geographical area of Chennai’.

14. As regards dominance of DLF in the relevant market as above, explanation (a) to section 4 of the Act defines ‘dominant position’ as a position of strength, enjoyed by an enterprise, in the relevant market, in India, which enables it to operate independently of competitive forces prevailing in the relevant market; or affects its competitors or consumers or the relevant market in its favour. The Commission, on this aspect, observes that there are a large number of developers and builders in Chennai who are engaged in developing residential space. The data provided by the informant shows that within the OMR IT corridor itself, there were a number of other builders who had launched similar projects in that area, whereas OP 1 was involved in just one project.

15. In view of the above discussion, we find that no prima facie case was made out by informant to hold OP2 or the group of OP1 and OP2 as dominant in the relevant market of providing 2/3 BHK flats on OMR IT Corridor.

16. In view of the foregoing, the Commission deems it fit to close the proceedings in the above case under section 26(2) of the Act.

17. Secretary is directed to communicate the decision of the Commission to all concerned accordingly.

sd/-
(H.C. Gupta)
Member.

sd/-
(Anurag Goel)
Member.

sd/-
(M.L. Tayal)
Member.

sd/-
(Justice S.N. Dhingra)
Member.

sd/-
(Ashok Chawla)
Chairperson.