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Fair Competition
For Greater Good

COMPETITION COMMISSION OF INDIA

Case No. 45 of 2015

In Re:

1. **M/s Ess Cee Securities Pvt. Ltd.**
A-1/269, GF, Paschim Vihar, New Delhi **Informant No. 1**
2. **M/s Signature Securities Pvt. Ltd.**
209, Local Shopping Complex, DDA Market,
Block-A-6, Paschim Vihar, New Delhi **Informant No. 2**

And

1. **M/s DLF Universal Limited**
Shopping Mall, 3rd Floor, Arjun Marg,
DLF City, Phase - 1, Gurgaon **Opposite Party No. 1**
2. **M/s DLF Home Developers Limited**
DLF Centre, Sansad Marg, New Delhi **Opposite Party No. 2**

CORAM

Mr. Ashok Chawla
Chairperson

Mr. S. L. Bunker
Member

Mr. Sudhir Mital
Member

Mr. U. C. Nahta
Member



Mr. M. S. Sahoo
Member



Justice (Retd.) Mr. G. P. Mittal
Member

Present: Mr. Harsh Bansal and Mr. Subhash Chand Bansal for the Informant

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

1. The information in the present case has been filed by M/s Ess Cee Securities Pvt. Ltd. and M/s Signature Securities Pvt. Ltd. (hereinafter, the '**Informants**') under section 19(1)(a) of the Competition Act, 2002 (hereinafter, the '**Act**') against M/s DLF Universal Limited and M/s DLF Home Developers Limited (hereinafter, '**OPs**'/ '**DLF**') alleging, *inter alia*, contravention of the provisions of sections 3 and 4 of the Act in the matter.
2. The Informants are private limited companies registered under the Companies Act, 1956. It has been stated in the information that the Informants have booked an apartment each in the residential project DLF Capital Greens, Phase III, Shivaji Marg, New Delhi developed by DLF. The Informants claimed to have made bookings of the said apartments in September 2010 on the basis of various representations made by DLF and its strong sales network of authorised dealers. DLF promised that the project would be delivered in 33 months.
3. It is alleged that DLF sent demand notices to the Informants on monthly basis immediately after the bookings were made and a penal charges of Rs.57,479.81/- and Rs.1,24,582.96/- were levied on the Informant No. 1 and the Informant No. 2 respectively for making delayed payments. The Informants have alleged that the afore-mentioned demand notices were issued by DLF without obtaining the requisite approvals/ sanctions for construction. It is also alleged that despite being



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fully aware that the project would not be delivered on time, DLF regularly raised demand notices and levied delayed charges so as to ensure that the apartment allottees kept on paying money in accordance with its terms and conditions.

4. It is submitted that any refusal to abide by the dictates of DLF was meted with threats of forfeiture of money deposited and cancellation of allotment. In this regard, the Informant No. 2 has cited an instance where its allotment was cancelled by DLF in 2011 on grounds of non-adherence to its payment schedule. However, the allotment was restored after it made the full payment with delayed charges.
5. It is also alleged that the apartment buyers such as the Informants were compelled to sign a one-sided and unfair Apartment Buyers' Agreement (hereinafter, the '**Agreement**') under the threat of forfeiture of the money already deposited. Further, the Informants have alleged that DLF unilaterally allotted parking spaces to the apartment buyers without providing them an opportunity to exercise their choice regarding the basement level. Furthermore, the Informants have alleged that parking slots were treated by DLF as stock for sale when these were commonly owned by the apartment buyers. DLF also sought to defraud the apartment buyers by invoking *Force Majeure* clause in the '**Agreement**' which relieved DLF from compensating the apartment buyers for any delay for a period of 17 months.
6. The Informants have also claimed to have written several emails/ letters to DLF enquiring about the status of the project however, such queries were responded with ambiguous answers. Finally, on 01.03.2013, *i.e.*, just 3 months prior to the scheduled delivery of possession, DLF wrote a letter to the Informants stating that it received approvals for the building plan from the competent authorities only on 15.02.2013. As such, it would not be able to meet the delivery schedule promised earlier. Thereafter, the Informants have engaged with DLF through letters and emails. On 27.10.2014, the Informants received a reply from DLF stating that the



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compensation for delay in delivering possession of the apartment @ Rs.10/- per square feet per month would be given. This, according to the Informants, was unreasonable since apartment buyers were made to pay penal interest at 18% p.a. for any delay in making payments.

7. Based on the foregoing, the Informants have alleged that the conducts of DLF are in contravention of the provisions of section 4 of the Act and have requested the Commission for a direction asking DLF to cease and desist from such practices.
8. The Commission has considered the information and material available on record and heard Mr. Harsh Bansal and Mr. Subhash Chand Bansal, who appeared before the Commission on behalf of the Informants.
9. It appears that the Informants are primarily aggrieved with the alleged abusive conduct of DLF in regards to, *inter alia*, making false representations regarding delivery schedule, concealing information relating to requisite approvals/ sanctions, selling of parking spaces, defrauding the Informants by invoking force majeure clause in the 'Agreement', *etc.* in violation of the provisions of section 4 of the Act.
10. Before adverting to the specific allegations put forth by Informants, the Commission notes that OPs belong to the same group. It may be noted that section 4 of the Act prohibits abuse of dominance by a dominant enterprise/ group in a relevant market. Accordingly, determination of relevant market is required for examining the alleged abusive conduct of DLF. As per the provisions of section 2(r) the Act, 'relevant market' means the market which may be determined by the Commission with reference to the 'relevant product market' or the 'relevant geographic market' or with reference to both the markets.
11. Considering the facts of the present case, the relevant product market would be the market of *'provision of services relating to development and sale of*
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residential apartment'. This is so because the Informant was willing to purchase a residential apartment and approached DLF for purchasing the same. Further, in accordance with the provisions of section 19(7) of the Act, no other product(s), such as services relating to development and sale of commercial/ industrial properties and residential plots may be considered as substitutable/ interchangeable with provision of services relating to development and sale of residential apartment. With regard to the relevant geographic market, the Commission notes that Informants were looking for an apartment in Delhi. The conditions of competition in the market of provision of services relating to development and sale of residential apartment in Delhi is homogeneous and can be distinguished from the adjacent regions of Delhi such as Noida, Gurgaon, Ghaziabad, *etc.* Therefore, the Commission is of the view that the relevant geographic market in this case would be the territory of 'Delhi'. Thus, the market of '*provision of services relating to development and sale of residential apartment in Delhi*' is considered as the relevant market in the instant case.

12. In regards to dominance of DLF in the relevant market, it is noted that in the geographic region of Delhi, DLF is just one of the real estate developers engaged in the provision of services relating to development and sale of residential apartment. There are many other real estate developers operating in Delhi who are engaged in the provision of services relating to the development and sale of similar residential dwelling units. Some of such developers include Delhi Development Authority, Ansal API, Umang Realtech, Emaar Group, CGHS Group, Parsvnath, *etc.* These developers appear to pose competitive constraints to DLF in the relevant market. Also, presence of these real estate developers in the relevant market indicates that the Informants were not dependent upon DLF for purchasing residential apartments.

13. In view of the foregoing, the Commission is of the opinion that DLF *prima facie* does not appear to be dominant in the relevant market defined *supra*. Since DLF is not found to be in a dominant position, the question of its conduct being



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abusive does not arise. Accordingly, no *prima facie* case of contravention of the provisions of section 4 of the Act is made out against DLF and the matter is hereby closed under the provisions of section 26(2) of the Act.

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

Sd/-

**(Ashok Chawla)
Chairperson**

Sd/-

**(S .L. Bunker)
Member**

Sd/-

**(Sudhir Mital)
Member**

Sd/-

**(U. C. Nahta)
Member**

Sd/-

**(M. S. Sahoo)
Member**

Sd/-

**(Justice (Retd.) Mr. G. P. Mittal)
Member**

**New Delhi
Date: 26.08.2015**