COMPETITION COMMISSION OF INDIA

Case No: 49/2011

In Re:

South City Group Housing Apartment Owners Association	Informant

And

(1)	Larsen &Tubro (L&T); and	Opposite Parties
(2)	Shri Dinesh Ranka	

Order: Member (Dr. Geeta Gouri) under Section 26(7)

1.   Background

An information filed under Section 19(1)(a) of the Competition Act, 2002 (hereafter referred to as "the Act") by the South City Group Housing Apartment Owners Association (hereafter referred to as the "Informant" or "SUGRUHA") alleging infringement of Section 3 and Section 4 of the Act by the Larsen &Tubro (hereafter referred to as "L&T" or the Opposite Party No. 1) and Shri Dinesh Ranka (hereafter referred to as "L&T" or the Opposite Party No. 2).

2.   Facts and allegations

2.1   According to the Informant, the project namely South City, Bangalore, situated on the south of the Bangalore, with more than 2000 apartments in 18 towers was started in 1999. The project was to be completed within 72 months from the date of sanction of the building plan which was 30.4.1996. As per clause 22 of the 'Development Agreement' between the promoters, the project

was to be completed by April 30, 2002. However, even after 12 years of beginning the project, it is still incomplete. The Informant alleged that being a dominant player in the relevant markets, OP No. 1 has abused his dominant position in the (i) market of services of development of apartments in Bangalore and (ii) market for the services of estate management and maintenance of residential apartments in Bangalore.

3. Findings of DG report

3.1. After examining all the aspects, the Commission found existence of prima-facie violation of the provisions of the Competition Act, 2002 and decided to refer the case under section 26(1) to Director General to investigate the matter. DG has conducted the investigation and submitted his report on 27.2.2013. DG did not find any contravention of either Section 3 or Section 4 of the Act.

3.2. To determine the dominance of the OP, DG has analysed the factors one by one given in Section 19(4) of the Act. On the basis of sales turnover, DG has relied on the sales figures for the year 2010-11 with respect to the real estate business of OPs and other builders in the relevant market and found that the OPs turnover was only Rs.250 crores (real estate business) as compared to combined turnover of Rs.4745 crores of 7 other major developers.

3.3. As far as number of apartments executed by the major builders in the relevant market (excluding the OPs), the DG included all the residential projects executed by them since 2006.A total of 14600 apartments (fully completed projects) since 2006as compared to the apartments developed by 7 major developers, OP has only 2000 units (12%) in its South City project and some of the Builders have more apartments to their credit. Further, DG has also taken in account the apartments built on Bannerghatta Road in the vicinity of South City before the year 2000, about 1000 apartments were built by 2 other developers (Brigade Millennium- 700 Apts and Mantri Paradise- 300 Apts). DG further states that if the pre-2000 projects are taken with the post 2006

projects the total number of apartments comes to 17600 Apartments and the market share of the OPs falls below 12%.

3.4. On the basis of above analysis, DG concludes that OPs are not dominant in the first relevant market. DG also analysed one by one other factors given in Sec 19(3) of the Act like size and resources, size and importance of the competitors, economic power of the enterprise including commercial advantage over its competitors, vertical integration, dependence of consumers on the enterprise, etc. and concluded that OPs were not in a position of strength that enables it to operate independently of competitive forces or affects its competitors or consumers in its favour in the relevant market.

4. Majority order

The allegations in the present case are mainly on the two counts viz. (i) the market of services of development of apartments in Bangalore and (ii) market for the services of estate management and maintenance of residential apartments in Bangalore. The Majority Order of the Commission has accepted the DG report in full and passed an Order under Section 26(6) of the Act. I however partially differ with the Majority Order. Regarding issue no. (ii) i.e. market for the services of estate management and maintenance of residential apartments in Bangalore, I am in full agreement with both the findings of DG as well as with the Majority Order and find that OP-1 is not a dominant player in the market of maintenance services. However, regarding issue no. (i) i.e. market of services of development of apartments in Bangalore, I have a different view as far as the definition of relevant market is concerned. Since I am not convinced with the methodology adopted by the DG for defining the relevant market for issue no. (i), I would prefer to do the same on my own.

5. Redefining the market:

5.1 At the outset it is important to capture the dynamics of the real estate in the definition of the relevant market. Buying a property or a flat is determined by several factors which combine to attract buyers and thereby to define the relevant market. Urban settlements historically have seen shifts in location of habitats (villages, townships, cities etc), defined by conditions of employment, trade, conveniences *et al* forces that have been well documented by sociologists. Similar patterns at a basic perhaps simplistic level, can be observed in the shifts in movements of housing areas for residential apartments in growing cities and often in pockets. Residential areas concentrated in older parts of a city shift outwards as the city expands and more people come in for employment from outside the city. Real estate service providers mirror these movements in the residential pockets they offer for sale. Some of these factors for example the location of Gurgoan close to the airport, facilities of school and other linkages of an emergent township were examined by the Commission in its Order on DLF (Case No.19/2010) . Interestingly factors that define 'attractiveness' for a buyer in terms of location change over time, suggesting that in the real estate sector the relevant market at a period of time may very often not encompass a whole city but rather remains restricted to areas where the growth and expansion in the city is expected to occur. This view I held in the case of real estate development in the old Madras-Mahabalipuram road(IT Express Corridor – Chennai Dissent Order Case No 29/2012). In my opinion growing cities requires a more nuanced definition of relevant market. As we shall see later the aspect of substitutability underlining the real estate market is both location specific and time specific. We shall develop on these aspects in keeping with Sec.19(6) and 19(7) of the Act.

Relevant Geographic Market:

5.2 For defining the relevant geographic market, factors listed in Sec 19(6) have been analysed by the DG one by one and on the basis of his analysis, he concludes that South City cannot be taken as a separate geographic market. I differ from the DG and the Majority Order on taking Bangalore as the relevant

geographic market. Furthermore, for calculating the market share I agree with the Informant that the data should be taken for the period 1996-2005 and as the project is incomplete there is 'continuing effect' of the allege anti-competitive practices under the Act.

5.3   As per Sec 19(6) of the Act, the Commission shall, while determining the relevant geographic market have due regard to all or any of the following factors, namely:-

a)   Regulatory trade barriers;
b)   Local specification requirements;
c)   National procurement policy;
d)   Adequate distribution facility;
e)   Transport cost;
f)   Language;
g)   Consumer preference;
h)   Need for secure or regular supplies or rapid after sales services.

5.4   From the buyer's point of view in the real estate sector excepting for (a) regulating trade barriers and (c) National Procurement Policy, other factors influence the dimension of the geographic market. The factors selected especially transport cost, consumer preference etc. have an inherent temporal perspective. For example, in old well developed cities, realty growth follows the logistics bringing in the time dimension that was referred to earlier. Factors like local specification and consumer preference should be taken into account while determining the relevant geographic market. Consumer preference is very much dependent upon number of factors like proximity of residence to work place, school/college/educational institution, hospitals, market etc. as all such facilities always have great influence in decision making of a prospective buyer. A prospective buyer will try to buy a house in a geographical area where he gets all such facilities enabling him to save his time and money. Proximity to road, rail, airport, highway, metro rail, golf course, cinema hall, etc., also has a major role in decision making of a prospective buyer. Language is also an important factor as a buyer will purchase a house where most of the people in that area speak the language

which he knows for better communication. And lastly, but not least, consumer preference plays a very important role for making his decision as every consumer has his own taste.

Relevant Product Market:

5.5 As per definition given in section 2(t), a relevant product market comprising all those products or services which are regarded as interchangeable or substitutable by the consumer, by reason of its characteristics, price and intended use. As per Sec 19(7) of the Competition Act, it is clearly mentioned that "the Commission shall, while determining the relevant product market, have due regard to all or any of the following factors, namely:-

    (a) physical characteristics or end use of goods;
    (b) price of goods or services;
    (c) consumer preferences;
    (d) exclusion of in-house production;
    (e) existence specialised producers;
    (f) classification of industrial products.

5.6 Factors like physical characteristics, price of goods or services and consumer preferences, play a very important role while defining the relevant product market and product substitutability or product differentiation, particularly in real estate sector. The end use as we all know is for residential purpose whether for self or for tenant.

5.7 For defining the relevant product market, DG has generalised and taken all the apartments irrespective of their prices. I am of however the opinion that price of the apartments should be taken into account while defining the relevant product market. Price reflects the nature of construction (luxury, high end etc) in conjunction with geographical area within which the dwelling is located and access to civic amenities. All apartments with different prices cannot be substitutable. In fact, to capture the attractiveness of location and the nature of construction price per/sq.ft maybe more appropriate. Apartments should be

categorised in groups on the basis of price pattern in the relevant geographical market for the relevant time period. However, DG has not done this exercise in the present case. To elaborate my above view, I would like to highlight some economic concepts related to market power and relevant market under the Competition Law before reaching a conclusion.

5.8   In general, competition policy banks upon assessment of market shares and exercise of market power, we need to take cognizance of competitive constraints faced by firms in order to define the relevant markets. These constraints exist in the product market itself, and are also defined spatially, i.e., within a particular area. It becomes important to note that a relevant market, must have both a product and geographical aspect. In the reality sector the product market is intertwined with the geographical market. In fact, the former namely the product, must be defined clearly, in order to arrive at geographical boundaries. Hence, by definition, a relevant market cannot just have a product dimension or just have a geographic dimension: it must be a collection of products in a given area.[1]

5.9   In the real estate sector, the relevant product market can be defined on the basis of three factors as laid down in the Section 19(7) of the Competition Act viz. physical characteristics, price of goods or services and consumer preferences as these three factors have a very important role in determining the inter-changeability or substitutability as explained in the foregoing paras. In my opinion price is the most important factor as it captures the other two factors viz. physical characteristics, (which may include size, and other related facility like club house, swimming pool, fully furnished or semi-furnished, material used, location etc.) and consumer preferences like location, brand name, proximity to other facilities. All these facilities help in determining the price of a dwelling unit in a given geographical area. For a prospective buyer with a budget of Rs.40 lakh (say), all the apartments with a price tag around Rs.40.00 lakh (with possible variation of 10% on both sides) can be termed as

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[1]Bishop and Walker, "The economics of EC Competition Law"; Sweet and Maxwell; 3rd edition; Chapter 4, 2010..

substitutable in a given geographical area at a given period of time. Price of an apartment can also be used as a proxy to many other factors as discussed in above paras like location, brand, reputation of the builder, other add on facilities provided with the apartment, connectivity with rail, road, airport, Metro, etc. and plays a very important role for making a decision of a prospective buyer. Even within a project, there may be different type of apartments like 1-BHK, 2-BHK, 3-BHK, 4-BHK, Penthouse, Vilas, etc. with different pricing schemes but price per/sq.ft would be more or less the same across the project. What is well known and can be observed from a cursory reading of the property section of Newspapers there is some sort of price parallelism in apartments of projects of other developers in the same geographical area. Interestingly, in the real estate business product market and geographic market are intertwined largely on account of the influence of location.

5.10   With the above analysis, one can conclude that price of an apartment is a major criterion while determining the relevant product or its substitutes in a given geographical area at a given period of time.

5.11   The important issue is how to define the market in line with the above analysis which we proceed to apply to the case of the South City Group Housing developed by Larsen & Tubro (L&T), Bangalore.

6.   Relevant Market - South City Project

6.1   On the basis of the above factors that determine the relevant product market a few factors need to be emphasised in the case of South City Project while defining its market and dominance.

6.2   South City Project according to the informant is a project in south zone of Bangalore. The project consisted of 2000 apartments on a land bank of 34 acres. Bangalore, as is well known is a city for more than a century with clear

cut divisions of cantonment and city. The city is spread over 183105 acres (or 741 sq kms).In several old cities like Chennai and Bangalore real estate development and especially of luxury and high end apartments got a fillip with the onset of technology and IT parks. As the first IT city linked to the globalised world Bangalore attracted IT firms and people sought employment from all over the country. In this scenario the south part of Bangalore saw a mushrooming of IT firms and other technology related firms. South City was among the earlier projects started in 1999. As per the information given 2000 apartments over 18 towers on 34 acres was to be built. The land was bought by the OP-2.Having such a large land bank in one location is difficult in an already well developed and laid out city like Bangalore and OP.1 may have an edge over its competitors in terms of land bank in the south of Bangalore. New developers who entered the market post 2000 such as Brigade Millennium (700 Apartments) and Mantri Paradise (300 apartments) offered smaller number of apartments.

6.3. L&T an engineering company diversified into cement conceived the project with Shri Dinesh Ranka a real estate developer. The availability of a large land bank with locational advantageous position and more so in 1999 may not be the same for developers post 2000 which in defining the relevant product market in the reality sector may take note of:

I.   The concept of high-rise residential apartments with conveniences was just catching on in Bangalore;
II.   South City in mid-nineties was the growth area of Bangalore; post 2005 the growth area has shifted to North Bangalore closer to the airport;
III.   Whether the advantage of land bank was available to other developers in South City during and after the period;
IV.   How were the other developers positioned in this aspect;
V.   Civic amenities and other conveniences were planned for South City and there was mushrooming of IT industries medical centres, consultancy firms etc in South Bangalore.

Without taking into account these factors the definition of relevant market does not capture the dynamics of reality sector. The static approach of DG and Majority Order on account of the reasoning offered above persuades me to differ from them. It is necessary and important to redefine the market.

Order

For the reasons stated above the case requires further investigation and under section 26(7) the case be sent back to DG to redefine the relevant product/service market by taking into consideration the factors prevailing during the commencement of the South City Project in the south of Bangalore and then assess the dominance of the OPs in the relevant market to reach at a conclusion.

The Secretary is directed to do inform the parties accordingly

SD/-
(Dr. Geeta Gouri)

Date 23 Oct 2013