

COMPETITION COMMISSION OF INDIA

Case No. 50 of 2012

Dated: 13.12.2012

IN THE MATTER OF:

Shri Kaushal K. Rana
38, Top Floor, Uday Park, New Delhi-110049

Informant

v.

DLF Commercial Complexes Ltd.
1-E, Jhandewalan Extension, Naaz Cinema Complex, New Delhi-110055

Opposite Party

ORDER UNDER SECTION 26(2) OF THE COMPETITION ACT, 2002

The present information has been filed by Shri Kaushal K. Rana ('the informant') under Section 19(1)(a) of the Competition Act, 2002 ('the Act') against DLF Commercial Complexes Ltd. ('the OP') alleging *inter-alia* contravention of Section 4 of the Act.

2. The informant herein claimed to be a businessman and Director of M/s Kaushal Infraproject Industries (India) Ltd. He being in need of office space in West Delhi area, made an application to the OP for allotment of commercial office space at the proposed building of the OP namely DLF Tower, Shivaji Marg, Najafgarh Road, West Delhi, in March 2008. The opposite party allegedly invited applications for selling off the office space in the said building without seeking the requisite approvals of the competent authorities under the Municipal Act and Building Bye-laws. Several representations and promises were made by the OP through their Commercial Office Space Buyer's Agreement (the 'agreement'), including completion and possession of the complex within 36 months from the date of execution of the agreement. The informant acted on those representations and deposited the amount of Rs. 7,50,000 as booking amount for provisional allotment of the said office space. Thereafter, the opposite party kept asking the installments from the informant by sending demand notices. However, when the informant went at site of the proposed building in

November 2008, he found no sign of construction as against the promises made by the opposite party.

3. The informant alleged that the agreement entered into between him and the OP was a standard agreement applicable to all dealings made by opposite party for its multiple projects and its clauses were arbitrary, unfair and onerous on the other party. He further stated that there was no escape from this one-sided agreement except by way of opting for OP's re-trading scheme introduced in 2009. However, the informant was not allowed to avail that scheme as he had paid less than 35% of the total amount of the agreement which was the eligibility condition to exercise the scheme. The informant therefore alleged that the OP, being a dominant enterprise abused its dominant position by making him sign such one-sided agreement which included clauses like cancellation of allotment on failure of the buyer to accept the terms of the agreement within 30 days, forfeiture of earnest money, 'time as essence' of contract applicable only on buyer, obligation to pay and not to OP's obligation to execute its part of the contract, high interest rate on buyers' failure to pay the installment within stipulated time but no interest on OP's cancellation of contract and refund of money. Further the information stated that the OP delayed the project using its dominant position and caused colossal losses to the informant. The informant approached the Commission to get an inquiry instituted into the agreement executed by the OP with the allottees which allegedly contravened the provisions of Sec 4(2) of the Act.

4. The Commission has perused the information and heard the counsel for the informant. The allegations pertain to contravention of section 4 of the Act. Section 4 prohibits abuse of dominance by a dominant enterprise in a relevant market.

4.1 **Relevant Market:** Section 2(r) read with section 19(5) of the Act requires determination of relevant market with due regard to the relevant geographic market and relevant product market. Section 2(t) defines relevant product market as '*a market comprising all those products or services which are regarded as interchangeable or substitutable by the consumer, by reason of characteristics of the products or services, their prices and intended use*'. Further section 2(s) defines relevant geographic market as '*a market comprising the area in which the conditions of competition for supply of goods or provision of services or demand of goods or services are distinctly homogenous and can be distinguished from the conditions prevailing in the neighboring areas*'. Considering these provisions of the Act, the relevant market proposed by the informant, namely 'real estate

developer in Delhi and Gurgaon', seems incorrect. Though the OP may have a PAN India presence but the geographic conditions prevailing in different parts of the country require determination of relevant geographic market in context of that area. Gurgaon and Delhi are different relevant geographic markets for the purposes of case at hand. Gurgaon developed in last few years in a major way and various big projects were started by the OP Group in that area. However, in Delhi, opposite party is just one of the real estate developers. There were many other real estate developers in Delhi who offered similar commercial/office space. The informant in the present case was desirous of booking an office space. Therefore, the relevant market in the present case will be market for 'development of commercial/office space in the region of Delhi'.

4.2 **Dominance of the enterprise:** Having determined the relevant market, next step is to assess whether the opposite party was dominant in the relevant market so determined or not. Section 19(4) of the Act states that the Commission needs to consider various factors stated under that section while assessing whether an enterprise enjoys a dominant position or not. As per the information available in public domain, it is clear that the OP was not the only real estate developer offering commercial office space in Delhi. There are other real estate developers as well e.g. Ansal API, Unitech, BPTP, Omaxe, Parsvnath etc. Presence of other real estate developers offering commercial office space also indicates that the informant was not dependent upon the opposite party for provisioning of an office space. None of the factors stated under section 19(4) of the Act seem to support informant's plea of dominance of opposite party. Therefore, the opposite party does not appear to be dominant in the relevant market of 'development of commercial/office space in the region of Delhi'.

4.3 **Abuse of dominant position:** In view of the above discussion, the Commission need not proceed with the plea regarding abuse of dominance in this case, as the OP was not dominant in the relevant market determined by the Commission.

5. From the facts of the case, it is apparent that there does not exist a *prima facie* case under section 4 of the Act to order DG investigation. Allegations related to unfair trade practices, deficiency in services etc. may be pleaded at other appropriate forums, if the informant so desires, the same being not within the ambit and jurisdiction of the Commission.

6. 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.

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

Sd/-
H.C. Gupta
(Member)

Sd/-
Geeta Gouri
(Member)

Sd/-
Anurag Goel
(Member)

Sd/-
M.L. Tayal
(Member)

Sd/-
Justice (Retd.) S.N. Dhingra
(Member)

Sd/-
Ashok Chawla
(Chairperson)