



**COMPETITION COMMISSION OF INDIA**

**Case No. 52 of 2014**

**In Re:**

**Vardhman Plus Citi Mall Traders Welfare Association  
173, First Floor, Vardhman Plus City Mall,  
Local Shopping Centre (LSC)  
Sector-23, Commercial Plot No. 2,  
Dwarka, New Delhi-110077**

**Informant**

**And**

**Vardhman Properties Ltd.,  
G 9 Vardhman Trade Center,  
DDA Building, Nehru Place,  
New Delhi**

**Opposite Party No. 1**

**DDA through its Vice-Chairman  
VikasSadan, New Delhi**

**Opposite Party No. 2**

**MCD through its Commissioner  
West Zone (Dwarka), Delhi**

**Opposite Party No. 3**

**Delhi Police through its Commissioner  
Police Head Quarters,  
Indraprastha Estate, New Delhi**

**Opposite Party No. 4**

**CORAM**

**Mr. Ashok Chawla  
Chairperson**



**Mr. M. L. Tayal**

**Member**

**Mr. S. L Bunker**

**Member**

**Mr. SudhirMital**

**Member**

**Mr. Augustine Peter**

**Member**

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

1. Vardhman Plus Citi Mall Traders Welfare Association (the “**Informant**”) has filed the instant information under section 19(1) (a) of the Competition Act, 2002 (the “**Act**”) against Vardhrnan Properties Ltd. (OP 1), DDA through its Vice-Chairman(OP 2), MCDthrough its Commissioner (OP 3) and Delhi Policethrough its Commissioner (OP 4) alleging, *inter alia*,contravention of the provisions of Section 4 of the Act in the matter.
2. Facts of the case, as stated in the information, may be briefly noted:
3. The Informant is a registered Association of the shop owners/ allottees of units at Vardhman Plus City Mall, Dwarka, New Delhi. OP 1 is a real estate developer whoconstructed the Vardhman Plus City Mall, Dwarka. OP 2 is an auctioneer who called for the bid for development of the commercial plots into commercial complexes.
4. It is averred that ‘Builder Buyer’s Agreements’ were executed with OP 1 in respect of the individual units in the said Mall. It is alleged that the terms of the agreement are unilateral, one-sided, unfair and in violation of the



provisions of Section 4 of the Act. The said terms stated to have restricted the usage of the common area and facilities by the members of the Informant.

5. It is stated that OP 1 is illegally holding the common areas of the said Mall and is utilizing the same for commercial purposes and also earning profit by letting out and selling the temporary structures and roofs and by installation of ATMs and *khokhas* in the common areas.
6. It is further alleged that OP 1 has failed in its obligation to get the shops registered in the name of the allottees (members of the Informant) despite repeated verbal as well as written requests and reminders from the allottees. The delay in registration resulted hike in the circle rates and also in the rates of stamp duty applicable on the said transactions. This delay on the part of OP 1 alleged to have cost additional expenditure on the members of Informant. It is stated that clarification was sought in this regard by the Informant from OP 2 but no response was received.
7. It is further averred that OP1 is withholding the basement parking in the Mall and does not allow access to any member of the Informant. In this regard, the Informant has also referred to the Delhi Apartment Ownership Act, 1986 where builder, after handing over the possession of the flat, is required to hand over the common areas and facilities alongwith the original documents of the plans to the Association of the apartment owners.
8. It is contended that the members of the Informant, being exclusive owners, have all the statutory and legal rights in relation to the said Mall as stipulated by the Delhi Apartment Ownership Act, 1986 and that they should be allowed to have access to the common area alongwith the facilities of the Mall.
9. The Informant has also highlighted the fact that despite repeated request, OP 1 failed to provide the information and documents such as (a) layout plan of the Mall clearly defining the common areas, common facilities, partition etc. and floor wise number of units on each floor, (b) latest list of the shop owners



with their address and phone number, (c) sanctioned plan of the building clearly defining the constructed and common areas, (d) completion certificate in respect of the building, (e) numbering plan of each unit, (f) proof of compliance of obligations towards DDA in respect of the Mall, (g) details of lease money collected by OP 1 and paid to DDA for area under possession, (h) basis for the collection of the lease money all these years by OP 1 from the shop owners.

10. Accordingly, it is alleged that the conduct of the Opposite Parties is anti-competitive and that the clauses of the said 'Builder Buyer's Agreements' are in contravention of the Act which necessitate modification of the same.
11. Based on the above averments, the Informant has prayed, *inter alia*, for initiating an investigation against the conduct of the Opposite Parties for abuse of their dominant position and for issuance of direction for modification of the clauses of the said 'Builder Buyer's Agreements'.
12. The Commission has perused the information. Facts of the case reveal that the grievance of the Informant primarily pertains to the non-registration of the 'Builder Buyer's Agreements' by OP 1 and abusive terms of the said agreement which are alleged to be unilateral, one-sided and unfair. The said terms stated to have restricted the usage of the common area and facilities of the said Mall in contravention of the provisions of section 4 of the Act.
13. For examination of the alleged abusive conduct of the OP 1, it is required first to delineate the relevant market where the OP 1 is operating and then to assess its position of dominance in the relevant market so delineated and finally, examination of conduct in case it is found to be in a dominant position in the relevant market.
14. The relevant product market may be defined as "*the market for commercial units/ space in shopping Malls*". The commercial real estate prices vary from one location to another depending on various factors such as development of

the region, supply of land, location of business establishment etc within Delhi region. A buyer of commercial retail space for shops in shopping Mall is likely to take into account all these factors to maximise his returns. Thus, geographic area of “*Delhi region*” appears to be the relevant geographic market in the instant case.

15. Accordingly, “*the market for commercial units in shopping Malls in Delhi*” is considered as the relevant market in the instant case.
16. Though the Informant, in its complaint, has mentioned four Opposite parties but its grievance essentially relates to OP 1 for its alleged abusive conduct. OP 1 is a real estate company through which the shop owners had purchased the space in the said Mall. Therefore, it would be appropriate to analyse the market position of OP 1 in the instant case.
17. Informant has not provided any information to show the dominance of OP 1 in the relevant market. As per the information, available in the public domain, there are many other organized real estate companies such as DLF Limited, Ansal Housing & Construction Ltd., MGF Infratech, EMAAR MGF, Parsvananth, Wave Infratech, Eros Group, etc offering a number of retail projects in Delhi area in the relevant market.
18. On the second parameter i.e. Gross Lettable Area (GLA), shopping Malls of OP 1 do not feature in the top 10 shopping Malls in Delhi/Gurgaon/Noida in terms of GLA and hence cannot be termed dominant in the relevant market based on this parameter.
19. Presence of other players in the relevant market indicates that the members of the Informant have the option to switch over to other players in the relevant geographic market. Since there is no information available on record and on the public domain to show the position of strength of the OP 1 which enables it to operate independently of the competitive forces prevailing in the relevant market, *prima facie*, the OP 1 does not appear to be in a dominant position in



the relevant market. In the absence of dominance of OP 1 in the relevant market, its conduct cannot be examined under the provisions of section 4 of the Act.

20. In the light of the above analysis, the Commission finds that no *prima facie* case of contravention of the provisions of section 4 of the Act is made out against OP 1 in the instant matter. Accordingly, the matter is closed under the provisions of section 26(2) of the Act.

21. The Secretary is directed to inform all concerned accordingly.

**Sd/-**  
**(Ashok Chawla)**  
**Chairperson**

**Sd/-**  
**(M. L. Tayal)**  
**Member**

**Sd/-**  
**(S .L. Bunker)**  
**Member**

**Sd/-**  
**(Sudhir Mital)**  
**Member**

**Sd/-**  
**(Augustine Peter)**  
**Member**

**New Delhi**

**Date: 29.09.2014**