



Case No.54 of 2013

In Re:

A resident of Eldeco Elegance

Informant

And

Eldeco Housing and Industries Ltd.

Opposite Party

Eldeco Corporate Chamber I, Vibhuti Khand,

Gomati Nagar, Lucknow- 226010

CORAM:

Mr. Ashok Chawla
Chairperson

Dr. Geeta Gouri
Member

Mr. Anurag Goel
Member

Mr. M. L. Tayal
Member

Mr. Justice (Retd.) S. N. Dhingra
Member

Mr. S.L. Bunker
Member



Order under Section 26 (2) of Competition Act 2002

The OP had been active in real estate development in north India and developing projects in Panipat, Sonapat, Ludhina, Jhansi, Neemrana, Jalandhar, Noida and Lucknow. In September 2006, the OP launched the Eldeco Elegance residential complex project comprising residential flats, club and a commercial complex in Lucknow. The informant had booked a flat in this project in 2006.

2. As per the facts stated in the information, the project was to be completed in three years i.e. by September 2009 but the same was not completed yet. The informant alleged that the OP abused its dominant position in dictating the terms of the sale agreement which on one hand put no obligation on OP for delays and other failures and liabilities and on the other hand put the apartment allottees in an extremely disadvantageous position. Also the action of the builder pursuant to the terms of such agreement was unfair and discriminatory, violating the provisions of Section 4 of the Competition Act 2002 ('the Act').

3. The following terms of the agreement and actions *sinter alia* of the OP were alleged to be in violation of section 4 of Act.

i. The builder has the right to reject and refuse the execution of agreement with the buyers without assigning any reason. Allottees, on the other hand, have no right to make any changes in the agreement, however justified they may be.



- ii. The project promised to be completed within three years i.e. by September 2009 was not completed even after six years. Of the 336 flats, possession of only around 250 flats had been handed over to their owners. The installments were collected from all the allottees as per the original schedule despite the delay in construction.
- iii. Any delay on the part of buyer in making payment of installments entailed an interest @ 18% but when the project was delayed by the builder, the compensation to be given to the buyers on the amount paid by the buyers as the cost of the flat was minimal @ 5%.
- iv. While giving the letter for the final payment, the OP raised demand for unverified additional super area of the flat. The calculation of super area was not provided to the buyers. The details of calculation pertaining to additional demand were never made known to the buyers. At the time of final payment, the OP abused its dominant position by demanding extra payment for areas ranging from 80 sq. ft to around 158 sq ft from the residents.
- v. In the registration deed, the OP clearly mentioned that after three years it would hand over maintenance of the flats to a Resident Welfare Association. However, in abuse of the dominant position, the OP did not form any committee to smoothen the process of the formation of RWA although it gave possession of 250 flats out of 336. Owners/ families were actually residing in 150 flats. On the contrary, when the residents got together on their own initiative and formed an RWA, the OP termed this action as illegal and gave a negative publicity with a view to disband this RWA.



5. The informant prayed for causing an investigation to be made regarding the abuse of dominant behaviour of the OP in the relevant market within the purview of the provisions of Section 4(2)(a) of the Act.

6. The Commission considered information and oral arguments of informant. For examining whether the OP had a dominant position and abused that position in the relevant market, first the relevant market has to be defined keeping in view the facts of the case. The relevant market can be defined as per the provisions of Section 2(r) read with section 19(5) of the Act with due regard to the relevant geographic market and relevant product market. From the facts, it is evident that the relevant product market would be “the provision of services for development and sale of residential apartments” (which can be interchangeable or substitutable by the consumer) and the relevant geographic market is the area of Lucknow as the conditions for provision of services for development and sale of residential apartments in Lucknow are distinctly homogeneous and can be distinguished from the conditions prevalent in the neighboring areas. Thus, the relevant market would be “the provision of services for development and sale of residential apartments in Lucknow”.

7. It is now to be assessed whether the OP was dominant in the above relevant market or not. Explanation (a) to Section 4 says that the "dominant position" means a position of strength, enjoyed by an enterprise, in the relevant market, in India, which enables it to—(i) operate independently of competitive forces prevailing in the relevant market; or (ii) affect its competitors or consumers or the relevant market in its favour.



8. 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. The informant did not supply any relevant data regarding the market share of OP in the relevant market. It is inferred from the information available in public domain, the OP was not the only real estate developer offering residential flats in Lucknow. There were various developers of equal repute and standing like Persist Group, PM Developers, Swaraaj Infraestate & Allied Ltd., SAS Group & many more. Presence of other builders of repute having similar projects in the area also shows prevalence of competition. It is not a case where OP could operate independent of competitive forces. Thus, it seems, *prima facie*, the OP was not a dominant player in the relevant market. The Commission in “Ajit Mishra and Supertech Ltd” (Case No. 03/2013) observed that, the presence of other well-known builders in the relevant market negates the contention that informant or any other consumer was dependent on the opposite party alone for purchase an apartment.

9. Since OP *prima facie* was not a dominant player in the relevant market, the OP cannot be said to abuse its dominant position in the relevant market within the meaning of Section 4 of the Act.



10. For the reasons stated above, the Commission is of the *prima facie* opinion that it is not a fit case for issue of directions for causing an investigation to be made by DG under section 26 (1) of the Act and the case deserves to be closed under section 26(2) of the Act. The Secretary is directed to inform the parties accordingly.

New Delhi

Dated: 03/10/2013

Sd/-
(Ashok Chawla)
Chairperson

Sd/-
(Dr. Geeta Gouri)
Member

Sd/-
(Anurag Goel)
Member

Sd/-
(M.L. Tayal)
Member

Sd/-
(S. N. Dhingra)
Member

Sd/-
(S.L. Bunker)
Member