COMPETITION COMMISSION OF INDIA

CASE NO. 78 OF 2016

In Re:

Sudarshan Kumar Kapur,
R/o 23C Navsena Apartments,
9 West Enclave, Pitampura,
New Delhi – 110034 **Informant**

And

Delhi Development Authority,
Through its Vice-Chairman,
Vikas Sadan, INA,
New Delhi – 110023 **Opposite Party**

CORAM:

Mr. S.L. Bunker
Member

Mr. Sudhir Mital
Member

Mr. U.C. Nahta
Member

Justice G.P. Mittal
Member

Appearances:

For the Informant: Informant in-person, with Ms. S. B. Kapur and Mr. Rakesh Khurana, Advocates

For the Opposite Party: Mr. Shlok Chandra and Ms. Uma Lohray, Advocates

Order under Section 26 (1) of the Competition Act, 2002

1) The information in the instant matter has been filed by Mr. Sudarshan Kumar Kapur (hereinafter the **'Informant'**) under Section 19 (1) (a) of the Competition Act, 2002 (hereinafter the **'Act'**) against Delhi Development Authority (hereinafter the **'OP'/'Opposite Party'/'DDA'**) alleging contravention of the provisions of Section 4 of the Act.

2) As per the information, the Informant is a resident of New Delhi. OP is a statutory body established under the Delhi Development Act, 1957 (hereinafter the **'DD Act'**) to promote and ensure the development of Delhi in a planned manner. It is, *inter alia,* engaged in the development and sale of land and residential units in Delhi.

3) It is stated in the information that the wife of the Informant namely Mrs. Surendra Bala Kapur applied for a residential plot in the Middle Income Group (MIG) category under the Rohini Residential Plot Scheme, 1981 (hereinafter the **'Scheme'**). In terms of Clause 2 of the brochure of the Scheme (hereinafter the **'Brochure'**), she deposited Rs. 5000/- with the OP on 24th March, 1981 @ Rs. 200 per sq. mt., as part consideration for a plot admeasuring 90 sq. mts. Further, as per Clause 5 of the Brochure, allotment of plots was to be done in a phased manner to be spread over a period of 5 years through draw of lots amongst the eligible applicants. It has been stated that OP however, did not conduct the draw of lots and no allotment was made to the Informant's wife for a period of 31 years. In the meantime, due to delay in conducting the draw of lots and allotment, the Informant is stated to have purchased a residential flat, in which the Informant and his wife are currently residing.

4) It has been further stated that draw of lots were finally conducted in the year 2012 after the Hon'ble Delhi High Court, *vide* order dated 14th March, 2012 passed in *W.P. (C) No. 7223/ 2007* titled *Krishan Lal vs. Delhi Development Authority*, directed the OP to start the process of allotment by holding draw of lots commencing

from 19th March, 2012 to be completed within three months thereof. The draw of lots was thereafter held on 12th June, 2012 and some of the applicants of the Scheme including the Informant's wife were allotted plots. In pursuance of the same, allotment-cum-demand letter (hereinafter the **'Allotment Letter'**) was issued to the Informant's wife on 27th November, 2014, again after a delay of more than 2 years, for plot no. 704, Pocket C1, Sector 30, Rohini, Delhi admeasuring 60 sq. mts. It is alleged that hence, there was a total delay of 33 years in issuing the Allotment Letter to the Informant's wife.

5) The Allotment Letter stipulated that the plot has been allotted on perpetual leasehold basis subject to the fulfilment of the terms and conditions of eligibility as contained in the Brochure. Further, the allotment was being made at pre-determined rates for the year 2014-15. In the Allotment Letter, two options were offered to the Informant's wife for payment *i.e.* in instalments or in lump sum. It was also stated that in case of latter option, the allottee would be entitled for possession by 31st December, 2014, subject to required formalities being completed before the scheduled time.

6) It has been alleged that since possession was being promised sooner in the latter option, the Informant chose the same and thereby deposited the full amount for the plot as demanded by OP on 24th December, 2014 by way of a bank transfer. It is further claimed that the Informant and his wife also completed all the required formalities as stated in the Allotment Letter by 26th December, 2014 in the hope that OP would hand over their developed plot by 31st December, 2014. However, till date, the possession of the plot has not been offered by the OP.

7) Further, it has been stated that on 2nd September, 2015 and 3rd November, 2015, the OP sought certain information/ details from the Informant's wife, which were also duly given by them on 15th September, 2015 and 16th November, 2015, respectively. The Informant has alleged that in spite of him and his wife doing everything in order, till date the OP has not given them possession of their residential plot and the land is still in undeveloped condition.

8) Subsequently, the OP issued a notice dated 7th January, 2016 to the Informant's wife to show-cause as to why the allotment of plot to her under the Scheme should not be cancelled as per Rule 17 of the Delhi Development Authority (Disposal of Developed NAZUL Land) Rules, 1981 (hereinafter the **'Nazul Rules'**) as the area of the residential flat in which they currently reside is more than 67.00 sq. mts. It is provided in Rule 17 (c) of the Nazul Rules that:-

> *"if the share of such individual in any such other land or house measures less than 67 sq. mts., he may be allotted a plot of Nazul land in accordance with the provisions of these rules."*

9) The Informant claims that his wife replied to the OP that Nazul Rule 17 talks about the proportionate share of land a person holds and not the actual area of the flat he resides in. It was informed that the total plinth area of the block in which the Informant's flat is located is about 100 sq. mts. The block consists of four flats. Therefore, the proportionate share of land which the Informant and his wife would have is only about 25 sq. mts., which is less than the limit of 67 sq. mts. as prescribed by the Nazul Rules. Hence, the Informant's wife is entitled for the allotment of residential plot. The Informant has further mentioned that when the same flat was converted into freehold by the OP on 26th October, 2010, the Sub-Registrar charged tax upon only 25 sq. mts. of land. The Informant has also referred to various cases decided by the Hon'ble Delhi High Court and the Hon'ble Supreme Court and asserts that these negate the contention of the OP.

10) In these circumstances, the Informant has approached the Commission, alleging the following acts of the OP as abuse of dominant position by the OP, in terms of the provisions of Section 4 of the Act:

a. The OP has asked for arbitrary price for the allotted plot which is 116 times higher than the price given in the Brochure. Further, the OP has charged at the prevailing 2014 rates instead of 2012 rates when the draw of lots were held;
b. Even after full payment and completion of all requisite formalities by the Informant and his wife, the OP has not given possession of the developed plot till date;

c. Clause 6 of the Brochure prescribes imposing penalty upon the buyer for delayed payment irrespective of any delay on the part of the OP; and

d. Serving wrongful show cause notice to the Informant's wife.

11) In light of the above facts and allegations, the Informant has prayed the Commission to investigate into the matter and direct the OP to adequately compensate the Informant and his wife for the loss of enjoyment of rightful possession of a developed plot in Delhi. The Informant has also prayed the Commission to grant interim relief of temporary injunction restraining the OP from carrying on its illegal activities until the conclusion of enquiry by the Commission.

12) The Commission considered the information and the material available on record in its meeting held on 27th October, 2016 and decided to have a preliminary conference with the parties on 29th November, 2016. Accordingly, the parties were heard on the said date.

13) During the preliminary conference, the Informant reiterated the facts and allegations stated in the information. He submitted that after waiting for 15 years for allotment of a plot, he purchased his present residential flat in 1996 through secondary sale. The Informant also stated that the OP has issued the show cause notice only after taking the full value of consideration of the plot. Further, the OP has not even bothered to respond to the reply to the show cause notice given by the Informant's wife. This entire attitude of OP shows its abuse of dominant position. In response, the OP submitted that it has cancelled the allotment of residential plot to the Informant's wife, *vide* letter dated 24th November, 2016, which has already been dispatched.

14) Upon considering the facts, allegations, oral submissions of the parties and other material available on record, the Commission notes that the Informant is aggrieved by the alleged abuse of dominant position by the OP, in contravention of provisions of Section 4 of the Act.

15) At the outset, the Commission notes that the Scheme was launched in the year 1981; however, the draw of lots were held only in the year 2012 and the Allotment Letter was issued again after a delay of 2 years in 2014. Therefore, the cause of action in the matter appears to have arisen after 2009 *i.e.* after the enforcement of the provisions of Section 4 of the Act. Since abuse of dominant position by a dominant enterprise/group post the enforcement of Section 4 of the Act is amenable to the jurisdiction of the Commission, the Commission has jurisdiction in the present matter.

16) For the purpose of analysis under Section 4 of the Act, the first requirement is to ascertain whether the OP is an enterprise as defined under Section 2 (h) of the Act. After such ascertainment, the relevant market is to be delineated as per Section 2 (r) of the Act. The next step will be to assess the dominance of OP in the defined relevant market as per the factors enumerated under Section 19 (4) of the Act and once the dominance of OP is established, the final step would be to look into the allegations of abuse of dominance.

17) Section 2 (h) of the Act defines an 'enterprise' as under:

> *"a person or a department of the Government, who or which is, or has been, engaged in any activity, relating to the production, storage, supply, distribution, acquisition or control of articles or goods, or the provision of services, of any kind, or in investment, or in the business of acquiring, holding, underwriting or dealing with shares, debentures or other securities of any other body corporate, either directly or through one or more of its units or divisions or subsidiaries, whether such unit or division or subsidiary is located at the same place where the enterprise is located or at a different place or at different places, but does not include any activity of the Government relatable to the sovereign functions of the Government including all activities carried on by the departments of the Central Government dealing with atomic energy, currency, defence and space."*

18) Thus, what Section 2 (h) of the Act implies is that any activities of the Government relatable to its sovereign functions are not covered under the definition of 'enterprise'. In this regard, the Hon'ble High Court of Delhi *vide* decision dated 23rd February, 2012 in *Union of India vs. Competition Commission of India & Ors.*

W.P.(C) 993/ 2012 in determining whether the Indian Railways is an 'enterprise' for the purposes of Section 2 (h) of the Act, has held that "*only primary, inalienable and non-delegable functions of a constitutional government should quality for exemption within the meaning of 'sovereign functions' of the government under Section 2 (h) of the Competition Act, 2002. Welfare, commercial and economic activities, therefore, are not covered within the meaning of 'sovereign functions' and the State while discharging such functions is as much amenable to the jurisdiction of competition regulator as any other private entity discharging such functions…*"

19) Similarly, the Hon'ble High Court of Delhi, in determining whether All India Chess Federation is an enterprise has held in *Hemant Sharma & Ors. vs. Union of India & Ors., 186 (2012) DLT 17* that "*prima facie, it appears to me that respondent No. 2 is rendering services to the petitioners and to all others who are registered with it as chess players. The responsibilities of respondent No. 2 as an NSF are set out in the guidelines issued by respondent No. 1, some of which have already been referred to earlier. Admittedly, respondent No. 2 organises chess tournaments and provides technical support and expertise for conduct of such chess tournaments. That, in my prima facie view, would constitute service rendered by respondent No. 2 to the players who are registered with it. Such service is being rendered for a consideration received from the players, as is evident from the registration form, a copy whereof has been filed on record by respondent No. 2. It is also borne by respondent No. 1 for the benefit of all chess players who provides grants to respondent No. 2. Respondent No. 2, prima facie, would also fall within the expression 'enterprise, as used in the Act which is very widely worded to even include a person or a department of the government rendering services "of any kind" and excludes only those activities of the government which are relatable to sovereign functions of the government and all activities carried out by the departments of the Central Government dealing with atomic energy, currency, defence and space. Respondent No. 2 does not fall in any of the said exceptions.*"

20) Further, the Hon'ble Competition Appellate Tribunal has held, in *Biswanath Prasad Singh vs. DGHS, Ministry of Health and Family Services & Ors., Appeal No. 63/ 2014* decided on 01st March, 2016 in regard to Director General of Health Services,

that "*A bare reading of this provision clearly shows that Government departments which are engaged in the stated activities are covered by the definition of enterprise. It is further seen that the definition does not cover only those institutions connected with activities relating to goods but also covers activities relating to provision of services of 'any kind' which gives a very broad connotation to the gamut of activities that can be covered in the definition of services. As far as exclusion is concerned, there are two possibilities. Firstly, the activities of the Government relating to sovereign functions of the Government are excluded. Further, this is a matter of situation specific facts as to what activities can be considered as relatable to the sovereign functions. The second exclusion is categoric, i.e. activities covered by the departments of Central Government dealing with atomic energy, currency, defence and space. ... "Central Government Health Scheme (CGHS) is a health scheme for serving/ retired Central Government employees and their families." Further the DGHS is clearly in the nature of a service provider that does not perform a function which can be termed as inalienable, as explained in several cases referred above. It cannot be said to be performing a sovereign function and, therefore, warranting exclusion from the definition of enterprise. CGHS is clearly an enterprise which provides healthcare services to the target group and in order to do so, in view of the constraints on its capacity, it laterally complements its resources by empanelling hospitals which include private hospitals as well. Therefore, the process of empanelment is essentially an expansion of CGHS' activities of providing healthcare to the target group. It is not a facilitation but a clear provision of service."*

21) Also, the Hon'ble Competition Appellate Tribunal, in the context of India Trade Promotion Organisation, has observed in *India Trade Promotion Organisation vs. Competition Commission of India & Ors., Appeal No. 36 of 2014* decided on 01st July, 2016 that:

> *"A reading of the plain language of Section 2 (h) shows that an enterprise means a person [this term has been given an inclusive definition in Section 2 (i)] or department of the Government, who or which is or has been engaged in any activity relating to production, storage, supply, distribution, acquisition or control of articles or goods, or the provision of services, of any kind..... but does not include any activity of the*

Government relatable to its sovereign functions including all activities carried on by the departments of the Central Government dealing with atomic energy, currency, defence and space. By incorporating Explanation below Section 2 (h), the legislature has given inclusive meanings to the words 'activity', 'article' and 'unit' or 'division'. The definition of the word 'person', which finds place in the opening part of Section 2 (h) is contained in Section 2 (l). It is inclusive and takes within its fold an individual, a Hindu Undivided Family, a company, a firm, an association of persons or a body of individuals, whether incorporated or not, any corporation established by or under any Central, State or Provincial Act or a Government company as defined in Section 617 of the Companies Act, 1956, or any body corporate incorporated by or under the laws of a country outside India, a registered co-operative society, a local authority and every artificial juridical person. The word 'service', which finds place in Section 2 (h) has been defined in Section 2 (u). It means service of any description which is made available to potential users and also includes the provision of services in connection with business of any industrial or commercial matters such as banking, communication, education, financing, insurance, chit funds, real estate, transport, storage, material treatment, processing, supply of electrical or other energy, boarding, lodging, entertainment, amusement, construction, repair, conveying of news or information and advertising. This shows that every possible type of activities is encompassed in the inclusive part of the definition of the term 'service'.

If the term 'enterprise', as defined in Section 2 (h) is read in conjunction with the definitions of the terms 'person' and 'service', it becomes clear that the legislature has designedly included government departments in relation to any activity relating to storage, supply, distribution, acquisition or control of articles or goods, or the provision of services of any kind. The width of the definition of 'enterprise' becomes clear by the definition of the term 'service'. The first part of the definition of 'service' makes it clear that service of any description, which is made available to potential users, falls within the ambit of Section 2 (h). The inclusive part of the definition of 'service' takes within its fold service relating to construction and repair. These two words are not confined to construction and repair of buildings only. The same would include all types of construction and repair activities including construction of roads, highways, subways, culverts and other projects etc. It is thus evident that if a department of the Government is engaged in any activity relating to construction or repair, then it will fall within the definition of the term 'enterprise'. I may add that there is nothing in Section 2 (h) and (u) from which it can be inferred that the definitions of 'enterprise' and 'service' are

confined to any particular economic or commercial activity. The only exception to the definition of the term 'enterprise' relates to those activities which are relatable to sovereign functions of the Government and activities carried by the four departments of the Central Government, i.e., atomic energy, defence, currency and space. It is also apposite to mention that Section 55 of the Act empowers the Government to issue notification to exempt from the application of this Act or any provision thereof any enterprise which perform a sovereign function on behalf of the Central Government or the State Government but, in its wisdom, the Central Government had not issued any notification granting exemption to the appellant. This implies that the Central Government had not considered the appellant to be an enterprise performing sovereign functions on behalf of the Central Government.

Although, the term 'sovereign function' has not been defined in the Constitution or the Act, but the same has acquired a definite meaning. It has been repeatedly held by the Courts that sovereign functions of the State/Government are those which are inalienable. These include enactment of laws, the administration justice, the maintenance of law and order, signing of treaties, meeting punishment to those found guilty committing crime. None of these and similar functions of the State can be delegated or performed by a third party or a private agency. In contrast, any activity relating to trade, business, commerce or like is a non-sovereign function because the same can be performed by any private party/entity. To put it differently, the functions which are integral part of the Government and which are inalienable are 'sovereign functions' and commercial actions/trading activities and actions, which can either be delegated or performed by the third parties are alienable and are not treated as 'sovereign functions'."

22) The Commission has further held with regard to the Board for Control of Cricket in India in *Sh. Surinder Singh Barmi vs. BCCI, Case No. 61/ 2010, vide* order dated 08th February, 2013 that "*The Act focuses on the functional aspects of an entity rather than institutional aspects. The scope of the definition on the institutional front has been kept broad enough to include virtually all the entities as it includes 'person' as well as departments of the government. The specific exception has been provided only to the activities related to the sovereign functions of the government. It is in substance the nature of activity that would decide whether the entity is an enterprise for the purpose of the Act or not. Thus, from the discussion, it suffices that the 'not-for-profit' society form as claimed by the OP does not take BCCI out of the definition*

of the enterprise and the activities of BCCI would be tested for its status as an enterprise."

23) Further, the Hon'ble Competition Appellate Tribunal, in the context of Public Works Department, Government of Haryana has observed in *Rajat Verma vs. Haryana Public Works (B&R) Department & Ors., Appeal no. 45 of 2015* decided on 16th February, 2016 that:

> *"The provisions of the Act shows that the main function of the Commission to curb anti-competitive activities and abuse of dominant position in the markets and also to regulate merger/ amalgamation of enterprises. This is the reason why the legislation does not make any distinction between the public sector or private sector or government departments when it comes to their interface with the market.*
> ……
> *If the term 'enterprise', as defined in Section 2(h) is read in conjunction with the definitions of the terms 'person' and 'service', it becomes clear that the legislature has designedly included government departments in relation to any activity relating to storage, supply, distribution, acquisition or control of articles or goods, or the provision of services of any kind……. We may add that there is nothing in Section 2(h) and (u) from which it can be inferred that the definitions of 'enterprise' and service' are confined to any particular economic or commercial activity. The only exception to the definition of the term 'enterprise' relates to those activities which are relatable to sovereign functions of the Government and activities carried by the four departments of the Central Government, i.e., atomic energy, defence, currency and space."*

24) The OP, in the instant matter, is a Government Department constituted under the DD Act. The objectives of OP are given in Section 6 of the DD Act, which include, *inter alia*, to promote and secure the development of Delhi according to the plan and for that purpose, the OP has the sole power in Delhi to acquire, hold, manage and dispose of land and other property, to carry out building, engineering, mining and other operations, to execute works in connection with supply of water and electricity, disposal of sewage and other services and amenities *etc.* However, these relegated functions of the OP are neither sovereign nor are identical with the inalienable functions discharged by the State. As can be seen, it has been held in a plethora of

cases/judicial pronouncements that performance of the aforementioned functions does not qualify to be exempted from the definition of enterprise. Hence, the OP falls within the definition of the term 'enterprise' as defined under Section 2 (h) of the Act.

25) The next step would now be to determine the relevant market. The allegations in the instant matter relate to development and sale of plots for residential purposes by the OP. The relevant product market as defined under Section 2 (t) of the Act means *"a market comprising of 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."* As observed by the Commission in previous cases relating to real estate sector, for instance in *Case No. 40 of 2014* titled *Deepak Kumar Jain vs. TDI Infrastructure Ltd. & Ors.*, from the buyer's perspective, a residential plot is a distinct product which may not be substitutable or interchangeable with residential flats or any other residential units. While in case of purchase of a residential plot, buyers have a freedom to decide the floor plan, number of floors, structure and other specifications at their own discretion, in case of a residential flat the design and construction is formulated and completed by the builder without providing much opportunity to buyers. Further, in case of purchase of a flat or an apartment developed by a real estate developer, the buyer gets some amenities such as gym, swimming pool, car parking, party lawn, playground and clubhouse *etc.*, which may not be available in case of purchase of a plot or independent house. Therefore, considering the factors discussed above, the relevant product market in the instant matter would be *"market for provision of services for development and sale of residential plots".*

26) With regard to the relevant geographic market, the Commission notes that the conditions of competition in the National Capital Territory of Delhi remains homogenous and distinct and can be easily distinguished, from the buyer's point of view, from the neighbouring areas such as NOIDA, Ghaziabad, Gurugram and Faridabad in terms of the difference in land prices, state laws and regulations, taxes, availability of public transportation system, *etc*. Further, the buyer may prefer to buy a plot in the National Capital of Delhi for various reasons owing to level of urban

development, availability of physical infrastructure, health and educational facilities, law & order situation, *etc*. Thus, the relevant geographic market would be "*National Capital Territory of Delhi"*.

27) Therefore, the Commission is of the opinion that the relevant market in the present matter is "*market for provision of services of development and sale of residential plots in the National Capital Territory of Delhi*".

28) Now, for the purpose of assessment of dominance of the OP in the above defined relevant market, the Commission notes that as per the website of the OP, it has acquired 67,354.88 acres of land so far, out of which 59,504 acres has already been developed. Out of the total developed land, around 30,713.95 acres of land is reserved for residential purpose. Moreover, the OP is a statutory authority constituted as per the DD Act for the purpose of regulating and developing land in Delhi. The Commission also notes that the OP is the biggest real estate developer in Delhi and no other developer can match/reach the size and structure of the OP. Further, being the statutory authority as per the DD Act, it appears that there are no comparable alternatives available in the relevant market from where a buyer can purchase residential plot in Delhi. Thus, in the light of above analysis, the Commission is of the view that the OP is indeed dominant in the above-defined relevant market.

29) The Commission will now deal with the allegations pertaining to the conduct of OP which is stated to be abusive in nature. On perusal of the submissions of the Informant, the Commission notes that the OP launched the Scheme for allotment of residential plots in Rohini in the year 1981. At that time, the Informant's wife applied for a residential plot admeasuring 90 sq. mts. @ Rs. 200 per sq. mt. by paying Rs. 5000/- *i.e.* approximately 27 per cent of the total consideration amount of the plot at 1981 rates. As per Clause 5 of the Brochure, allotment of plots was to be done in phases spread over a period of 5 years. However, the OP did not allot plots to around 25000 of these applicants for a period of more than 30 years. It is only after the intervention of Hon'ble Delhi High Court in *W.P. (C) No. 7223/ 2007* titled *Krishan Lal vs. Delhi Development Authority* and the Hon'ble Supreme Court in *SLP*

Nos. 16385-16388 of 2012 titled *Rahul Gupta vs. Delhi Development Authority & Ors.* that steps were initiated by the OP to proceed further with the allotment of plots to the persons who were left. Thereafter, though the instant draw of lots was held in 2012, Allotment Letter to the Informant's wife was issued only in 2014.

30) Keeping the above facts in mind, at the outset, the Commission observes that there has indeed been an inordinate delay of around 31 years by the OP *qua* the applicants like the wife of the Informant after the launch of the Scheme in conducting the draw of lots which too was conducted only after the Hon'ble Delhi High Court directed it to do so. Though the Commission does not deem it appropriate to interfere with the question as to whether or not the Informant's wife would be or would not be entitled to get a plot allotted, given the dominant position of the OP in the relevant market, from the perspective of Competition Law, the issue that requires examination is the overall conduct of the OP in dealing with the buyers like the Informant's wife under the Scheme. The Commission observes that given the dependence of buyers on the OP in the relevant market, they have little choice but to abide by the terms and conditions stipulated by the latter.

31) The first allegation being examined relates to Clause 6 of the Brochure, which provides for a penalty to be imposed on the allottees in case of delay of payment. Whereas, the commission notes that there is no corresponding clause in the Brochure which provides for imposition of penalty upon the OP for delay in allotment or giving possession of the plots. Similarly, the Allotment Letter dated 27th November, 2014 issued to the Informant's wife does not provide for any penalty in case delivery of possession is further delayed by the OP; however, it envisages that allotment would be cancelled if the allottee does not pay the full consideration amount within the time specified by the OP. Clause 6 of the Brochure reads that:-

> *"……if payment is not made within the stipulated period, an interest @ 12% per annum will be chargeable for the 1st month and 18% per annum for subsequent period of delay. The allotment is liable to be cancelled if the payment is not made within six months from the due date and earnest money could be refunded after deducting a sum of 10 % of the earnest money in addition to the interest payable."*

32) Hence, as per the provisions discussed above, the Informant's wife is required to make the payments, as and when demanded by the OP irrespective of the fact whether the promised action on the part of OP has been completed or not. The provisions of the Brochure and Allotment Letter thus appear to be lopsided. Further, the Informant's wife is completely at the discretion of the OP and is compelled to abide by seemingly unfair terms in view of the risk of cancellation on non-compliance on their part.

33) Further, the Allotment Letter itself states that electricity, street lights and domestic connection were not available as on that date. Yet, the OP made it mandatory for the recipient to pay around 80 per cent of the total consideration amount failing which the allotment would stand cancelled. Such a condition implies substantial financial commitment on the part of the buyer without any corresponding commitment on the part of OP despite the project having been delayed so much and yet it was not ready for the Informant to move in and no time-frame was even in sight for completion. It appears to be entirely unfair particularly in view of the fact that the OP had already delayed the draw of lots and issuance of Allotment Letter by around 31 years.

34) Next, the Commission observes that the OP had revised the price of the plots, which was initially Rs. 200/- per sq. mt. in 1981 as per the Brochure to Rs. 23,252/- per sq. mt. which was fixed as per 2014 prevailing rates at the time of allotment. The same works out to be an escalation of around 116 times of the initial rate quoted in the Brochure. On the other hand, the interest paid by the OP on the registration amount of Rs. 5000 (paid by the Informant's wife in the year 1981) for a delay of about 30 years is only Rs. 10,558/-. The same works out to be only 2 times of the amount paid by the Informant's wife. Thus, it emerges that there is no parity in the rate of escalation of the price to be paid by the allottees and the compensation being offered to them owing to the delay caused by the OP although both relate to the same period. Such stark difference between the two seems *prima facie* unfair *qua* the allottees and skewed in favour of OP particularly, in view of the fact that the application money of Rs. 5,000/- was almost 27% of the consideration amount.

35) Thereafter, even though the full consideration amount demanded by the OP was paid by the Informant's wife on 24th December, 2014, and the formalities alongside were also completed within the defined timeline, the OP did not give possession of the plot to her by 31st December, 2014 as stated in the Allotment Letter. Instead, the OP, *vide* letters dated 2nd September, 2015 and 03rd November, 2015, sought further details including their present residential status. Such details too were provided by the Informant and his wife to the OP. Yet, as the Informant alleges, rather than giving possession of the plot, his wife was served with a wrongful show cause notice dated 7th January, 2016 by the OP, according to which the Informant's wife was stated to be not eligible for allotment of a plot under the Scheme as the Informant already owned a residential flat admeasuring 99.365 sq. mts. in New Delhi which was stated to be in violation of the eligibility conditions as per Clause 1 (ii) of the Brochure and Rule 17 of the Nazul Rules. Clause 1 (ii) of the Brochure reads as under:

> *"The individual or his wife/ her husband or any of his/ her minor children do not own in full or in part on lease-hold or free-hold basis any residential plot of land or a house or have not been allotted on hire-purchase basis a residential flat in Delhi. If, however, individual share of the applicant in the jointly owned plot or land under the residential house is less than 65 sq. meters, an application for allotment of plot can be entertained. Persons who own a house or a plot allotted by the DDA on an area of even less than 65 sq. meters shall not be eligible for allotment."*

36) In this regard, the Commission observes that determination of eligibility or ineligibility of the Informant's wife in terms of Rule 17 of the Nazul Rules is a legal proposition which does not fall within the domain of the Commission. Hence, no opinion on the same is being expressed.

37) However, as stated earlier, the overall conduct of the OP in dealing with the Informant's wife needs to be examined in light of the dominant position that it holds in the relevant market. The Commission notes that the acquisition of flat by the Informant needs to be seen in the context of the inordinate delay caused by the OP in allotment of a plot to the Informant's wife. It is pertinent to note that the Informant's

wife was fulfilling the eligibility criteria at the time of making the application. The Commission also notes that though the applicants of the Scheme were required to submit an undertaking along with the application that he/ she or his/ her spouse or their minor children would not acquire any other leasehold residential plots/ flats from the Delhi Development Authority/ President of India/ Municipal Corporation of Delhi, yet such undertaking has any meaning only after allotment of plots. However, in the present case, the OP failed to make any allotment to the Informant's wife during the promised period of 5 years. The Informant waited for 15 long years and then acquired a residence for his family in the year 1996. It would be unreasonable to expect from any person not to buy a residence for his family even after such a long time just to ensure that he continues to satisfy the conditions for allotment forever in the hope that someday his wife would be allotted a plot by the OP. The time period of 5 years mentioned for phased allotment of plots as promised in the Brochure being extended to 33 years cannot be considered as reasonable.

38) The Commission also observes that asking the buyers to pay up to 80 per cent of the consideration amount *vide* Allotment Letter and thereafter determining their eligibility also amounts to an unfair and one-sided conduct, on the part of OP. Details relating to the eligibility of the Informant's wife could have easily been asked for earlier, before issuing the Allotment Letter.

39) The Commission further notes that in the show cause notice issued on 7th January, 2016, the Informant's wife was required to submit her response within 10 days from the date of issuance of the show cause notice. However, after receiving the response from the Informant's wife, the OP did not communicate its decision either to the Informant or his wife for more than 10 months despite reminder. It was during the preliminary conference before the Commission on 29th November, 2016, that the learned counsel for the OP verbally informed the Informant, without any supporting document, that a decision has been taken on his wife's response and her allotment has been cancelled. The OP took approximately 2 years from the date of receipt of full consideration amount to form a view upon the Informant's wife's eligibility. Such conduct of the OP *prima facie* not only caused extreme financial hardship and inconvenience to the allottees, but also resulted in mental trauma and psychological

stress upon them. It reflects the OP's high handed approach and apathy in dealing with the general public in exercise of its position of dominance. The allottees like the Informant have been made to suffer for inefficiencies and abusive conduct of the OP in its functioning.

40) The Commission observes that while applying, the buyers would have put in their hard earned money in the Scheme. With the fear of their applications getting cancelled, the buyers would not have any choice but to abide by all the terms and conditions put forth by the OP, such as the conditions of making all payments beforehand as well as agreeing to pay huge penalty for any lapse on their part and receive no or little compensation for any misconduct on the part of the OP. Rendering the buyers in such helpless situation, causing such an exceptional delay, imposing one-sided conditions, OPs overall behaviour in dealing with the buyers are *all* evidence of unfair conduct of the OP *qua* its customers.

41) Therefore, the Commission is of the considered view that the aforementioned conduct of the OP *prima facie* amounts to abuse of dominant position by the OP in terms of the provisions of Section 4 of the Act.

42) OP is a public body. A public body which is also a revenue-producing monopoly, acting as an undertaking, it is expected to refrain from certain conduct where it holds a dominant position, which comprises of provision of certain public services by such undertaking engaged in the services of general economic interest. Indeed, compliance with competition law should not materially impede public bodies' efficient exercise of their functions. However, public bodies need to ensure that their conduct is compliant with competition law. Effective competition in such markets can benefit the wider economy by encouraging greater productivity and innovation and preserving long term growth, while continuing to provide greater value for money to the taxpayer.

43) However, the Commission observes that it *prima facie* appears from the above that such was not the conduct of the OP. In fact, adverse observations have been made with regard to the conduct of the OP in regard to the 1981 Scheme by the Hon'ble

Delhi High Court in a catena of judgments. In *DDA vs. Ms. Swaran* and *Mr. Vishwa Raj Saxena vs. DDA, LPA Nos. 2594/ 2005* and *1110/ 2007* decided on 11.01.2008, it has been observed by the Hon'ble Delhi High Court that:

> *"DDA has been given a virtual monopoly for development and allotment of land/ flats in public interest and for public welfare. Providing accommodation to homeless and those belonging to lower economic strata of the society has a public purpose. Proper housing accommodation is a natural and a basic requirement. DDA should act reasonably and fairly, conscious of the civil and evil consequences that the citizens may be visited with by its action. Fairness should be perceptible in its action. Rights and obligations of those affected have to be kept in mind. Salus populi est Suprema Lex, regard for public welfare is the highest law. Even contractual matters should satisfy test of Article 14 of the Constitution. Decision should not be arbitrary, capricious, discriminatory or illegal, irrational and bad for want of procedural impropriety."*

44) Therefore, considering in totality the information, oral submissions made by the parties and all other material available on record, the Commission is of the view that there exists a *prima facie* case of contravention of the provisions of Section 4 of the Act by the OP and it is a fit case for investigation by the Director General (hereinafter the **'DG'**). Accordingly, under the provisions of Section 26 (1) of the Act, the Commission directs the DG to cause an investigation into the matter and file an investigation report within a period of 60 days from date of receipt of this order. In case the DG finds that the OP has acted in contravention of the provisions of the Act, the DG shall also investigate the role of the officials/ persons, who at the time of such contravention, were in-charge of and responsible for the conduct of OP's business.

45) Further, during the course of investigation, if involvement of any other party is found, the DG shall investigate the conduct of such other parties who may have indulged in the said contravention. In case contravention is found, the DG shall also investigate the role of the persons who at the time of such contravention were in-charge of and responsible for the conduct of the business of such contravening entity (ies).

46) The Commission makes it clear that nothing stated in this order shall tantamount to final expression of opinion on the merits of the case and the DG shall conduct the investigation without being swayed in any manner whatsoever by the observations made herein.

47) The Secretary is directed to send a copy of this order to the DG along with the information and other submissions filed by the parties.

Sd/-
(S. L. Bunker)
Member

Sd/-
(Sudhir Mital)
Member

Sd/-
(U.C. Nahta)
Member

Sd/-
(Justice G.P. Mittal)
Member

Place: New Delhi

Date: 12.01.2017