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Fair Competition  
For Greater Good

## COMPETITION COMMISSION OF INDIA

Case No. 84 of 2014

**In Re:**

**Vijay Kapoor  
BD-6, Janakpuri  
New Delhi -110058.**

**Informant**

**And**

**DLF Limited  
Shopping Mall, 3<sup>rd</sup> Floor  
Arjun Marg, Phase-I, DLF City  
Gurgaon - 122002.**

**Opposite Party No. 1**

**DLF New Gurgaon Home Developers Pvt. Limited  
1-E, Jhandewalan Extension  
New Delhi – 110055**

**Opposite Party No. 2**

**CORAM**

**Mr. Sudhir Mital  
Chairperson**

**Mr. Augustine Peter  
Member**

**Mr. U. C. Nahta  
Member**

**Justice G. P. Mittal  
Member**



**Appearances:**

<i>For Informant</i>	None
<i>For OP-1</i>	Mr. Ramji Srinivasan, Senior Advocate Ms. Manika Brar, Advocate Ms. Chandni Anand, Advocate Ms. Aishwarya, Advocate Ms. Poonam Madan, DLF Legal Head
<i>For OP-2</i>	Mr. Ramji Srinivasan, Senior Advocate Mr. Anjali Kumar, Advocate Mr. Rohan Arora, Associate, DLF Ms. Poonam Madan, DLF Legal Head

**Order under Section 26(6) of the Competition Act, 2002**

- 1 The present information has been filed under Section 19(1)(a) of the Competition Act, 2002 (**Act**) by Shri Vijay Kapoor (**Informant**) against DLF Limited (**OP-1**) and DLF New Gurgaon Home Developers Pvt. Ltd. (**OP-2**) (Hereinafter OP-1 and OP-2 together referred to as the **OP Group/OP**) alleging contravention of the provisions of Section 4 of the Act.
- 2 The Informant in the present case is an individual and a retired officer. OP-1 is a public limited company involved in the business of development of residential, commercial and retail properties. The project under reference was launched by DLF Home Developers Limited (**DHDL**), a wholly owned subsidiary of OP-1. Pursuant to the scheme of amalgamation/ merger duly approved by the High Court of Delhi *vide* its order dated 31.07.2013, DHDL amalgamated with OP-2.
- 3 As per the information, the OP group launched a residential project scheme by the name of 'Skycourt' at Sector 86, DLF Garden City, Gurgaon



consisting of 3 BHK apartment/ units having tentative floor area ranging between 1846 to 1867 square feet in different blocks. The Informant applied for the allotment of an apartment in the said project *vide* application dated 21.12.2012 and paid a booking amount of Rs. 10,31,000/-. Thereafter, a non-negotiable apartment buyer's agreement (**the Agreement**) was executed between the Informant and the OP group on 22.11.2013 and Apartment no. SCG 154, Floor No. 15, Block G in the said project of the OP group and two parking spaces no. PG2048 and PG 2049 were allotted to the Informant.

- 4 The Informant alleged that the OP group approached the Informant through an agent in the month of December, 2012 and assured that the total cost of the apartment would be Rs. One Crore with no hidden costs. The Informant was further informed that he would be offered a pre-launch discount of Rs. 500/- per sq. ft. Thereafter, a demand for booking amount of Rs. 10,31,000/- was made by the OP group. On 07.01.2013, the Informant received an allotment letter but copy of schedule of payment was not enclosed, which was promised by the OP group to the Informant.
- 5 Subsequently, on 20.01.2013, the Informant received a demand-cum-intimation notice whereby the OP group demanded a sum of Rs. 10,89,150.80/- which was supposed to be paid by 04.02.2013. The Informant protested against the said demand notice but was threatened with cancellation of the allotment and forfeiture of the amount already paid if the aforesaid amount was not paid by the due date. On 15.03.2013, the Informant received an 'Agreement to Sell'. However, after reading the Agreement, the Informant realised that the cost of the allotted apartment and the conditions stipulated in the Agreement were unfair, discriminatory and one-sided. The Informant wrote a protest letter to the OP group on 16.03.2013, expressing his unwillingness to pay the charges for parking and



preferential location, as the demand for these charges was more than the total cost of the apartment which was intimated to the Informant earlier by the agent of the OP.

- 6 The Informant alleged that as per Clause 36 of the Agreement failure on the part of allottee to execute and deliver the Agreement within 30 days would result in forfeiture of earnest money and non-refundable amount paid by the Informant. Therefore, the Informant deposited a copy of the agreement with the OP group on 28.03.2013. Thereafter also, the Informant received demand letters from the OP group for various sums of money.
- 7 On 30.04.2013, the Informant made a request to the OP group to provide a copy of the Agreement duly executed by the OP to him, as the same was required by the Informant for raising a loan. At that time, the Informant was assured that he would be provided with a copy of the Agreement soon. In the meantime on 11.09.2013, the Informant shifted to a different address and informed the OP group about the change of address on the same day. However, on 28.10.2013, the Informant received a cancellation letter on his previous address wherein the OP group stated that the amount of approx. Rs 15,97,219.73/- and any other amount paid by the Informant would be refunded separately. The Informant further alleged that on 31.07.2014, he received a letter dated 24.07.2014, wherein the OP group stated that the payment for the apartment was construction linked whereas, in fact, the construction was started by the OP group several months after the money was paid by the Informant. Alleging that the OP group had abused its dominant position by imposing extremely harsh and one-sided terms and conditions in the Agreement, the Informant requested the Commission to initiate an investigation into the matter.



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- 8 Upon consideration of the facts and circumstances of the case, the Commission found the OP group to be dominant in the relevant market of “*provision of services for development and sale of residential units in Gurgaon*” and observed that *prima facie* the conduct of the OP group was abusive and in contravention of the provisions of Section 4 of the Act. Thus, the matter was referred to the Director General (**DG**) for investigation under Section 26(1) of the Act *vide* order dated 05.02.2015 passed by the Commission. The Investigation Report was submitted by the DG on 02.06.2016.
- 9 In the Investigation Report, the DG defined the relevant market for the purposes of analysis of dominance as the market for “*the provision of services for development/ sale of residential units (apartments/ flats/ independent floors/ villas) under the licensed category of Residential Group Housing (RGH) and Residential Plotted Land (RPL) in Gurgaon*”.
- 10 However, upon consideration of the Investigation Report, the Commission observed that while defining the relevant product market, the DG had included the residential units developed under RGH and RPL licence in the same category even though they comprised of different types of properties such as apartments/ flats, plots and villas. The DG had not confined itself to that category of property which was the subject matter of the case *i.e.* an apartment/ flat. The Commission was of the opinion that the provision of the services for development and sale of residential villas/ plots was distinct from the provision of the services for development and sale of residential units/ apartments in terms of the end use. While villas are large luxurious houses having their own garden, pool, *etc.* and are more private; residential plots allow buyers to decide as per their own discretion the floor plan, number of floors, structure, and other specifics of the dwelling unit subject to applicable regulations; apartments/ flats designed and developed as a



सत्यमेव जयते



building by developers are low on privacy compared to villas/ plots and do not give discretion to a consumer to decide on floor plan *etc.* who can only choose the unit according to the floor area, price and facilities built into a project by the developer and independent floors combine the convenience of residential unit being developed by a developer and the privacy of a villa/plot. Thus, from consumers' perspective, a residential apartment would not be substitutable with a villa or a plot or an independent floor. Hence, it was observed that apartments/ villas/ plots /independent floors cannot be considered in the same category as done by the DG. Therefore, the relevant market was defined as the market for the '*provision of services for development and sale of residential apartments/ flats in Gurgaon*' and the DG was directed *vide* order dated 09.11.2016 to conduct further investigation under Regulation 20(6) of the Competition Commission of India (General) Regulations, 2009 and thereafter submit a Supplementary Report. The DG submitted the Supplementary Investigation Report on 11.08.2017.

**DG's findings in Supplementary Investigation:**

- 11 In view of the Commission's order dated 09.11.2016, the DG identified the following issue for supplementary investigation: 'Whether OP group is dominant as per the provisions of the Competition Act, 2002 or not, in the revised relevant market as defined by the Commission'.
  
- 12 The DG examined the above issue for the years 2012-13 to 2014-15. It was noted that the project in question, 'Sky Court' located in Sector-86, DLF Garden City, Gurgaon, was launched on 20.12.2012 (*i.e.* in financial year 2012-13). The Informant booked the residential apartment on 21.12.2012 in the said project and executed the buyer's agreement on 22.11.2013 (*i.e.* in financial year 2013-14). The execution of agreements of the project in question was started on 16.05.2012 and more than 80% of the level of



execution of agreements was achieved during the financial year 2014-15. Hence, the relevant scope/ period of investigation for the assessment of dominance of OP group based on the residential units launched and sold was considered as 2011-12 to 2014-15 (*i.e.* 4 years).

13 The DG, while assessing the dominance of OP in the relevant market, took into consideration factors such as the market shares of OP and other developers, size and resources of the enterprise, economic power of the enterprise including commercial advantage over other competitors, dependence of consumers on the enterprise, *etc.*:

*i.* **Market Share:**

The DG examined the market shares of the OP group in the relevant market suggested by the Commission on the basis of the residential licenses granted by Director General, Town and Country Planning, Haryana (**DGTCP**) to various developers, residential apartments/ flats launched by OP and other developers, total residential apartments/ flats sold during the relevant period by OP and other developers, sale value of residential apartments/ flats, per unit average sale price of the residential apartments/ flats and the status of inventory of OP and other developers:

*a) Licensed land bank:* The DG analysed the data on licensed land bank obtained from DGTCP relating to whole residential sector *i.e.* RGH and RPL during the period 2007-08 to 2011-12 and observed that that there were about 110 developers who had obtained licenses for a cumulative total land of 6,246.28 acres for their residential projects. It was noted that the top ten developers had obtained licenses for a total land of 3,883.20 acres, which constituted 62.17% of the total licensed land during



the relevant period. Out of the total licensed land of 6,246.28 acres during the cumulative period 2007-2008 to 2012-13, the OP group had the highest market share at 9.86% (615.65 acres), followed by Emaar MGF group, Ireo group, Vatika group and Ramprastha group with market share of 8.43% (526.76 acres), 8.13% (507.58 acres), 7.61% (475.04 acres) and 7.27% (453.87 acres) respectively. Further, the DG noted that except in two years *i.e.* 2011-12 and 2012-13 in which OP group occupied the top position, in other financial years, the top position was occupied by different developers in different financial years.

- b) *Launched residential apartments/ flats:* Further, the DG examined the number of residential apartments/flats launched in Gurgaon in the relevant period *i.e.* 2012-13 to 2014-15 and found that there were about 25 developers who had launched 28,166 saleable residential apartments/ flats. It was noted that the highest market share was that of Supertech Ltd. (**Supertech**) *i.e.* 12.42% (3,497 units), followed by Ireo Pvt. Ltd. (Ireo) with a market share of 9.09% (2,559 units). The OP group stood at 3<sup>rd</sup> position with a market share of 8.25% (2,325 units). The other competitors up to 5<sup>th</sup> position were M3M India (P) Ltd. (**M3M**) and Vatika Ltd. (**Vatika**) whose market shares were 7.92% (2231 units) and 7.63% (2149 units) respectively. Further, it was noted that the top position was occupied by a different developer in each financial year.
- c) *Number of residential apartments/ flats sold (unit-wise):* With respect to the total number of residential apartments/ flats sold (unit-wise) during the relevant period as per the actual data submitted by the concerned developers, the DG found that there were about 39 developers who sold a cumulative total of 20,025





residential apartments/ flats of which approximately 67% were sold by top ten developers. It was found that during the cumulative relevant period, the OP group had the highest market share of 8.33% (1,668 units), very closely followed by Ireo with 8.04% (1,610 units). There was a negligible difference of 58 residential apartments/ flats between the top two developers. The other competitors up to 5<sup>th</sup> position were Vatika, Supertech and Godrej Properties Ltd. (**Godrej**) whose market shares were 6.47% (1,296 units), 6.40% (1281 units) and 5.73% (1,147 units) respectively.

- d) *Number of residential apartments/ flats sold (value-wise):* In terms of sale of residential apartments/ flats value-wise, the DG observed that during the relevant period *i.e.* from 2012-2013 to 2014-15 there were about 39 developers who sold residential apartments/ flats of cumulative total worth of Rs. 32,821.41 crore of which approximately 65% (Rs. 21, 278.95 crore) was held by the top 10 developers. The OP group was at the top position in the total sales value of residential apartments/ flats in the relevant market during the relevant period. The total sales value of the OP group *i.e.* DLF group was Rs.6,581.00 crore (20.05%) followed by Ireo with Rs.3830.37 crore (11.67%). The other competitors up to 5<sup>th</sup> position were M3M, Vatika and Emaar MGF with Rs. 1920.72 crore (5.85%), Rs. 1607.35 crore (4.90%) and Rs. 1431.39 crore (4.36%) respectively.
- e) *Per Unit Average sale price per apartment/ flat:* As far as the per unit average sale price, per residential apartment/ flat during the cumulative relevant period was concerned, the DG found that the highest per unit average sale price was that of Ambience Pvt.



Ltd., *i.e.* Rs. 8.65 crore, whereas the OP group's per unit average sale price was Rs. 3.95 crore which ranked 3<sup>rd</sup>. The 2<sup>nd</sup> position was occupied by Pioneer Urban Land and Infrastructure Ltd. with Rs.5.40 crore, 4<sup>th</sup> position by Parsvnath Developers Ltd. with Rs.3.93 crore, which was very close to OP group and 5<sup>th</sup> position was occupied by Mahindra Life Space Developers Ltd. with Rs. 3.40 crore. The average sale price per residential apartment/ flat of top ten developers in the relevant market during the relevant period stood at Rs. 3.62 crore. The DG has noted that the price of the apartment of the Informant which was purchased from OP group was Rs. 1.32 crore.

- f) *Inventory:* The DG took note of the data collected from developers regarding the status of inventory, *i.e.* the residential apartments, which were launched and not sold as on 31.03.2012, of various developers including OP group. In the beginning of the relevant period *i.e.* 2012-13 as on 31.03.2012, the total inventory available for sale was 10,460 units. With the launch of cumulative total of 28,166 residential apartments/ units during the relevant period, the total available residential apartments/ flats for sale were 38,626 units. It was observed that out of the data collected from 28 developers, Vatika, having 1009 unsold units, occupied the top position followed by Ireo with 916 units and Anant Raj Limited with 861 unsold units. The OP group stood at 11<sup>th</sup> position with 425 unsold units.

The DG while concluding the analysis of data submitted by the developers observed that the market share in the range of 8 to 9% in a fragmented market where there are a number of players, no



developer including the OP group can be said to be a dominant player in the relevant market in the relevant period.

ii. **Size and resource of enterprise**

To ascertain the size and resources of the OP group and other developers i.e. top three developers in terms of licensed land bank, launches, sales (unit-wise and value-wise), the DG has done a comparative analysis of various financial parameters namely total and current assets and liabilities, total revenue, net income, reserve and surplus, net working capital and return on assets for the relevant period of 2012-13 to 2014-15. On comparing the size and resources of the OP group with its closest competitors, the DG found that the OP group had an edge over its competitors. The OP group had strong financial strength with the highest amount of current assets and current liabilities in the consecutive period from 2011-12 to 2014-15. Also, the net income and assets of the OP group were much higher than its competitors. Further, there was a persistent increase in reserve and surplus of the OP group during the relevant period. Hence, the DG concluded that from overall assessment of the entire OP group's financial data, it emerged that the OP group had a stronger position compared to other developers in the relevant market in the relevant period.

iii. **Size and importance of the competitors:**

The DG found that the main/ closest competitors of the OP group in the relevant market during the relevant period were Emaar MGF, Supertech, Vatika, Ireo, M3M and Ramprastha. The market shares of these developers were very close to that of the OP group in each year of the relevant period.



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iv. **Economic power of enterprise including commercial advantage over competitors:**

The DG has noted that the OP group was incorporated in 1946 and ever since it has been active in the field of real estate operations. Having such a long business developmental journey, the OP group has an advantage over its competitors. Further, the OP group being one of the first developers to enter into real estate business in the relevant geographical market, has the first mover advantage, which makes it a brand that the consumers are well acquainted with. However, post 2010-11 the market of residential properties for sale has witnessed the entry of many new as well as established players, which has affected the market share of the OP group as compared to the period prior to 2010-11. Several prominent players including Tata Housing and Development Company Ltd. (belonging to the Tata group) and Godrej Properties Ltd. (belonging to Godrej group) have entered the relevant market during the relevant period. Though these are relatively new entrants in the relevant market, they enjoy the benefit of their respective group's brand value as well as their strong financials. Thus, the DG has found that even though the OP group enjoys sound financial strength as compared to its competitors, the same does not enable it to act independently of competitive forces prevailing in the relevant market during the relevant period.

v. **Dependence of consumers:**

Based on the data regarding launch of similar projects as that of the OP group during 2011-12, the DG has observed that the Informant and other consumers had several choices of residential apartments/flats available with them, as many projects were launched by



established/ major developers during the relevant period. In fact, the number as well as comparative position of various developers in selling residential apartments/ flats during 2012-13 to 2014-15 witnessed significant change. During this period, none of the developers could retain the top position on a year on year basis. Further, position of the OP group also came down to 6<sup>th</sup> in the year 2014-15. It was noted by the DG that the Informant had chosen to purchase the apartment for his own personal use from the OP group despite the availability of similar apartments/flats in the same relevant market available at lesser rates in the same locality.

vi. **Entry barriers:**

The DG has not found any entry barrier in the relevant market as many developers entered the market during the said relevant period. However, the DG has noted that the real estate sector is a capital intensive sector with a long gestation period. Hence, the necessity of large capital and resources required for entry into the market might be a challenge for the new developer, particularly when it is seen in context of established players with long exposure and experience in the sector, but at the same time the new entrants get some benefits also viz. better infrastructure facility/ ready to use/developed/semi-developed internal roads, availability of power etc. due to the efforts of existing/ old developers.

- 14 The DG after considering all the factors mentioned above observed that the extent to which the OP group could operate independently of competitive forces or affect its competitors or consumers in the relevant market of “*the provision of services of development and sale of residential apartments/flats in Gurgaon*”, in the relevant period was insignificant. Therefore, in view of the above discussion, DG concluded that although the OP group occupied



सत्यमेव जयते



top positions when weighed against some factors, it could not be inferred that the OP group had the market power/dominance in the relevant market during the relevant period in terms of Section 4 read with Section 19(4) of the Act.

**Consideration of the Investigation Report by the Commission:**

15 The Commission considered the Investigation Report and the Supplementary Investigation Report of the DG on 31.05.2018 and decided to forward the same to the parties for filing their suggestions/ objections thereto. OPs were heard on 17.07.2018. However, none appeared for the Informant on the date of hearing.

**Submission of the OP Group:**

16 The OP group in its submission dated 10.07.2018 placed reliance on the findings of the DG in the Supplementary Investigation Report that the OP group does not enjoy a dominant position in the relevant market and stated that the OP Group lacked the ability to affect the: (i) competitors; (ii) consumers; or (iii) relevant market, in its favour.

17 The OP group stated that the data submitted by it as well as the data pertaining to the market share of different developers under various aspects, (licenses, launches, sales *etc.*) collected, analysed and concluded by the DG, shows that the market is highly competitive and fragmented. In this regard, the OP group submitted that the Herfindahl-Hirschman Index (HHI) for the residential apartments launched during 2011-2014 in Gurgaon was 175.12, which reveals that the market is not concentrated.

18 Further, with respect to the relevant market delineated by the Commission, the OP group contended that the relevant product market ought to have been defined to include the resale / secondary market in which numerous



सत्यमेव जयते



apartments/flats are available at competitive prices and the relevant geographic market also ought to be defined so as to extend to all of the National Capital Region (NCR).

- 19 Furthermore, the OP group has averred that the allegations raised by the Informant in the instant case are at best alleged contractual or commercial disputes within the purview of civil courts, or consumer redressal forums, and do not merit examination under the competition law. Moreover, in previous matters relating to real estate, it has been held that contractual breaches do not ordinarily give rise to a competition law issue which require intervention by the Commission.

**Analysis:**

- 20 The Commission has perused the materials available on record including the Investigation Report and Supplementary Investigation Report of the DG as well as the reply filed by the OP group. Also, the Commission has heard the arguments advanced by the learned counsel appearing on behalf of the OP group.
- 21 It is observed that the Informant's main grievance emanates from the Agreement that was entered into between the Informant and the OP group in 2013. The Informant has alleged that the OP group being a dominant player in the market has imposed unfair and arbitrary terms and conditions in the Agreement and that such conduct violates the provision of Section 4 of the Act.
- 22 Pursuant to perusal of the materials available on record, the Commission finds that the issue for determination in the instant case is: *Whether the OP group has contravened the provisions of Section 4 of the Act ?*



सत्यमेव जयते



23 Section 4 of the Act proscribes abusive conduct by a dominant enterprise. Since the conduct of the OP group needs to be analysed under Section 4 of the Act, the existence of a position of dominance in terms of the Act needs to be determined first as there can be no abuse of dominance in the absence of dominance. The position of dominance of an enterprise is, usually, with context to a relevant market within which such an enterprise is alleged to be abusing its position.

### ***Relevant Market***

24 On 09.11.2016, the Commission had considered the Investigation Report of the DG and observed that while defining the relevant market the DG had not confined itself to the property that was the subject matter of the case *i.e.* an apartment/ flat. Accordingly, the Commission had defined the relevant market as the market for the *'provision of services for development and sale of residential apartments/ flats in Gurgaon'*.

25 While defining the relevant product market, an important factor to be seen is that once the buyer decides to buy a residential apartment/ flat, whether substitutability and interchangeability is possible with another residential apartment/ flat generally offered in the same relevant product market by other players operating in the same geographic market. For the said purpose, the relevant factors that a buyer considers before purchasing a particular product have to be considered. Some of the factors which combined together determine the aspect of substitutability and interchangeability include: the budget, location of the project, quality of construction, general plan of development, amenities provided by the builder, materials used, value for money, developer's/ group's brand value, its expertise in the field, perception of brand in general, historical background, number of completed projects, possession/delivery within reasonable time and history of litigation are few of the many factors that are considered by the buyers while





सत्यमेव जयते



approaching a particular developer/ builder. Based on these factors, substitutability is possible within the entire market of services provided by the developers/ builders in respect of residential apartments/ flats launched in a particular period. Further, even if the factors provided under Section 19 (7) of the Act are considered then in terms of physical characteristics and end use, price and consumer preferences, the market for “*the provision of services for development and sale of residential apartments/ flats*” can be considered to be the relevant product market in the present case.

26 Further, the city of *Gurgaon* can be considered to be the relevant geographic market in the instant case based on factors like different regulatory authorities and different rules and regulations for *Gurgaon*, *Delhi*, *Noida*, *etc.*, separate master plan, differential cost of land development, prices, geographical distances, connectivity with airport and capital and the preferences of the consumers. The learned counsel for the OP group has, however, argued that the relevant geographic market should extend to the whole of NCR. The Commission is not in agreement with this argument. It may be noted that a relevant geographic market means an area where goods or services are sufficiently inter-changeable or substitutable under similar conditions of competition and are distinct from its neighbouring areas. The Commission is of the view that the entire region of NCR cannot be said to be one market. Though, like *Gurgaon*, other cities in NCR such as *Ghaziabad*, *Faridabad* and *Noida* also enjoy proximity to *Delhi*, however, various aspects like the ecosystem of the residential area in terms of schools/ hospitals/ market-places/ neighbourhood, locational advantage, potential transportation/ travel cost in terms of time as well as money for the buyers, the level of development of infrastructure, *etc.* play a crucial role in consumer preferences and hence in determining the relevant market.

27 The Commission observes that if the cities in NCR like *Noida* or *Ghaziabad* or *Faridabad* are compared with *Gurgaon* as per the criteria laid down above,



सत्यमेव जयते



it becomes apparent that the conditions of competition in these cities are not homogenous. Hence, these cannot together be considered as one geographic market. Even if there is a 5% increase in the price of the properties in Gurgaon, a consumer's preference will not change since there are other external factors to be considered while purchasing a residential property in the market. The geographic region of Gurgaon has gained relevance owing to its unique circumstances and proximity to Delhi, Metro Stations, preference by MNCs, big commercial and institutional centres, shopping malls, well developed infrastructure, wide roads, *etc.* Thus, in view of the foregoing, the Commission opines that the city of Gurgaon is a separate relevant market.

### ***Dominance***

28 With respect to dominance, the Commission observes that the DG has primarily relied upon two sources to obtain data for analyzing the market share; size & resources of different players and the land bank in credit of each player in the relevant market, *i.e.*, DGTCP and Haryana Urban Development Authority (HUDA) and from other players/ developers operating in the market.

29 In the instant case, in order to analyse the market share of the OP Group with respect to licensed land allotted by the DGTCP, the DG has observed that residential licenses were granted to around 110 developers during the period 2007-08 to 2012-13 for a cumulative total land of 6,246.28 acres. Out of this, OP Group had a share of 9.86% and occupied the 1<sup>st</sup> position with respect to its competitors such as Emaar MGF, Ireo, Vatika, and Ramprastha with a share of 8.43%, 8.13%, 7.61% and 7.27% respectively.

30 Further, with regard to the total residential apartments/ flats launched during the period 2012-13 to 2014-15, the DG has observed from the data submitted



सत्यमेव जयते



by around 40 developers that there were 25 developers who launched projects in the relevant market during the relevant period, out of which the OP group was at 3<sup>rd</sup> position with a market share of 8.25%. Furthermore, if the market shares are considered for the years 2012-13 and 2013-14 (*i.e.* the years when the Informant decided to purchase the residential apartment from the OP group) then it is observed that the OP group was at 4<sup>th</sup> and 3<sup>rd</sup> position in these years with a market share of 7.69% and 7.74%, respectively. In view of the aforesaid, it can be inferred that there were several developers who had launched their projects at the time the Informant purchased the residential apartment and that the OP Group did not hold a dominant position in such fragmented market where 90 % of the residential apartments/ flats were launched by other developers.

31 From the data collected by the DG from around 40 developers with regard to the total residential apartments/ flats sold unit-wise as well as value-wise during the period 2012-13 to 2014-15, the DG has observed that there were 39 developers who sold residential apartments/ flats in the relevant market during the relevant period, out of which the OP group was at 1<sup>st</sup> position in terms of units sold as well as value of units sold with a market share of 8.33% unit-wise and a market share of 20.05% value-wise. Further, if the market shares are considered for the years 2012-13 and 2013-14 (*i.e.* the years when the Informant decided to purchase the residential apartment from the OP group) then it is observed that unit-wise the OP group was at 2<sup>nd</sup> position in 2012-13 with a market share of 8.36% and 3<sup>rd</sup> position with a market share of 9.72% in 2013-14. In terms of value, the OP group was at 2<sup>nd</sup> and 1<sup>st</sup> position respectively in these years. In the years 2012-13 and 2013-14, the value-wise market share of the OP group was 8.96% and 30.11% respectively. Given such a market where more than 90% of the units were sold by developers other than the OP group and approximately 50% by the top ten developers, it cannot be said that the OP group has the ability to operate independently, and regardless of its competitors.



सत्यमेव जयते



- 32 Apart from the above, the DG has analysed market position/ shares of the developers in the relevant market on the basis of other parameters such as per unit average sale price and inventory, which also demonstrate that during the relevant period, the relevant market comprised of a number of players competing for the top position with the OP group.
- 33 Additionally, the DG has assessed the financial strength of the OP group and found that the same is evident from its assets and liabilities, as it has huge reserves and surplus exceeding that of their competitors. Even so considering other factors like the number of players in the market, the number of residential projects launched and sold by the OP group and its competitors and entry of new players over the past four years in the relevant market indicate that the OP group no longer has the ability to influence the market.
- 34 With regard to the dependence of consumers on the OP group and entry barriers, it is noted that there are several established real estate players that are operating in the same field as the OP group providing choices to the consumers intending to purchase residential apartment/ flat. Given the options available in the relevant market, even at the time the Informant had decided to purchase residential apartment/ flat, it does not appear that the consumers were dependent on the OP group. Moreover, there is no regulators bar on the entry of new players in the market. The presence and rapid growth of the innumerable players in the market itself refutes the issue of entry barrier in the instant case.
- 35 Thus, after assessing the facts of the present case in terms of the factors in the Act, the Commission is of the view that the OP group does not have a dominant position in the relevant market in terms of Section 4 of the Act.



36 The Commission is conscious of the fact that the OP group was found to be in a dominant position in Case no. 19 of 2010 (Belaire Owner’s Association v DLF Limited and Others) and in other subsequent cases. However, it is noteworthy that the present case is distinct from these previous cases. The primary distinguishing factor is the period of assessment. It is to be borne in mind that the markets by their very nature are dynamic and keep changing with time. Therefore, while analysing dominance under the provisions of the Act, an important factor that needs to be taken into consideration is the time-period during which the contravention of the provisions of the Act is alleged. In the present case, it is noted that the property in relation to which the allegation of abuse has been made was booked in 2012-13, whereas in the previous cases the property was booked in the period 2006-2009. The investigation by the DG shows that the market dynamics as they existed then are different from those in 2012-2013. Several new players have entered the geographic market of Gurgaon to provide the services of development of residential apartments. These include not only new players competing to make a space for themselves in the market but also players with established brand names such as Tata and Godrej. Thus, in such a changed market scenario during the relevant period no individual player including the OP group appears to have the ability to influence the conditions of competition in the relevant market.

#### ***Abuse of Dominance***

37 Since the OP group does not appear to be in a dominant position in the relevant period with the changed scenario, there remains no requirement to examine the allegations of abuse of dominance, since in the absence of dominance there can be no case of abuse of dominance in terms of Section 4 of the Act.



### ***Conclusion***

38 In view of the above, the Commission concludes that the contravention of the provisions of Section 4 of the Act is not established in the instant matter. Hence, the case is ordered to be closed under Section 26(6) of the Act.

39 The Secretary is directed to inform the parties accordingly.

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

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

**Sd/-**  
**(U. C. Nahta)**  
**Member**

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

**New Delhi**  
**Dated: 31.08.2018**