

BEFORE THE
COMPETITION COMMISSION OF INDIA

Dated: 31-1-2012

Case No. 43 of 2011 ✓

Information filed by:

Mr. Haravtar Singh
R/O, Bath Road, Hunslow, TW47HW,
London, UK.

Opposite Party:

M/s. DLF Limited
DLF Centre, Sansad Marg
New Delhi-110001

Case No. 44 of 2011 ✓

Information filed by:

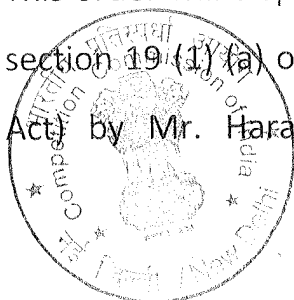
Mrs. Gurjit Kaur Arora
R/O, Bath Road, Hunslow, TW47HW,
London, UK.

Information Against:

M/s. DLF Limited
DLF Centre, Sansad Marg
New Delhi-110001

Order

This order will dispose of two separate information filed on 08.08.2011 under section 19(1)(a) of the Competition Act, 2002 (hereinafter referred to as the Act) by Mr. Haravtar Singh Arora and his wife Mrs. Gurjit Kaur Arora



hereinafter referred to as the Informants) alleging abuse of dominant position by DLF Limited (hereinafter referred to as the Opposite Party or the OP).

2. The allegations in these two cases relate to a residential project namely "The Belaire" at Gurgaon, Haryana, developed by the OP. It has been alleged that by abusing its dominant position, the OP has imposed arbitrary, unfair and unreasonable conditions on the apartment allottees of the said project.

2.1 The facts and allegations in both the cases, in brief, are as under;

2.1.1 The informants, who happen to be husband and wife, booked two apartment units in the project "Belaire" situated at DLF City, Phase - V Gurgaon, Haryana. While the informant in case no. 43, was allotted an apartment D-091 on the 09th floor, the informant in case no. 44 was allotted an apartment E 114 on the 14th floor in the building- BLE in the aforesaid project. Both the Informants made a down payment of Rs. 20,00,000/- towards the booking amounts for the said apartment units.

2.1.2 The OP sent a demand notice on 10.05.2007 to both the informants to make further payment of Rs 25, 88,77 (in case no. 43) and Rs 26,73,370 (in case no. 44) indicating 03.06.2007 as the due date for making payments. Demand notices were sent on subsequent dates also in the months of May and June 2007 by the OP to the informants.

2.1.3 According to the informants, although there was delay in commencement of the project which was also acknowledged by the OP



through a letter dated 27.07.2007, the OP kept on issuing reminder notices for payment of further installments. Subsequently, the OP without issuing any notice sent cancellation letters dated 22.02.2010 to the informants intimating that the apartment units booked by them have been cancelled and amounts paid by them have been forfeited.

2.1.4 The informants have submitted that the OP collected advance towards booking of apartment units in April 2007, much before they had received due approvals for the project. Further, as per the terms and conditions of apartment buyer's agreement, if for any reason including non-sanction of the building plan, the company was not in a position to finally allot an apartment applied for within a period of 1 year, the amount deposited by the intending allottee was to liable be refunded with a simple interest @ 9% per annum. However, instead of doing that, the OP kept on asking the informants to pay further installments and even to pay penal interest on delay in making such payments. Further, the OP on its own also kept revising the payment plans and also imposed interest in the arbitrary manner.

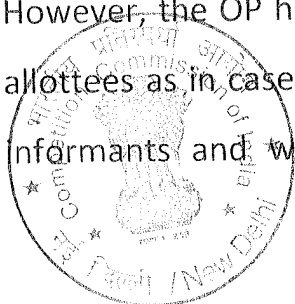
2.1.5 According to the informant, there are clauses in apartment buyer's agreement in which it has been mentioned that the OP can do things at its sole discretion, which implies that OP is in position to abuse its dominant position to make customers sign on the dotted lines without giving them an opportunity to negotiate the terms of agreement.



3. The information in both the cases was considered by the Commission in its meetings. It was noted that order under section 27 of the Act was passed in case no. 19 of 2010 against the OP in the case involving project 'Belaire' based on an information filed by Belaire Owners Association, in which issue of dominance and abuse thereof had also been decided. It was also noted that the information in these two cases also pertain to the same project and prima facie the facts also appear to be similar. However, the facts need to be verified and accordingly DG may investigate the matter and in case there is dissimilarity as compared to the facts of the earlier case, the same need to be brought out in the investigation. Order under section 26(1) was passed accordingly in both the cases by the Commission on 13.09.2011.

4. The DG, having after receiving the directions from the Commission, investigated the matter and submitted his investigation reports dated 09.12.2011 and 12.12.2011 in these two cases to the Commission.

4.1 In his investigation report, DG has brought out that the instant two cases and the case no. 19 of 2010 relate to the same project i.e. 'The Belaire'. There are similarities on the facts and issues in present case vis-a-vis the case no. 19 of 2010 in which information for the same project was filed by Belaire Owners' Association except for the fact that the Informants in the instant matter have not signed the buyers' agreements after booking the apartment units. However, the OP has imposed similar terms and conditions on the apartment allottees as in case no. 19 of 2010. The OP had allotted the apartment to the Informants and was demanding subsequent payments on the terms and



conditions identical to the case no. 19 of 2010. DG has also reported that the OP in its submissions dated 15.11.2011 has also stated that there is no dissimilarity between the instant two cases and case no. 19 of 2010.

4.2 According to DG, there is a class or groups of buyers of the apartments whose bookings have either been cancelled, amounts forfeited and flats rebooked for others and interest has been charged for delayed payments on the basis of various clauses of agreement of the OP.

4.3 DG has also submitted that as per the information obtained from Belaire Owners' Association, the project which was to be completed in April- July 2009, has not yet been completed.

4.4 DG has further reported that as found in case no. 19 of 2010 various clauses of the agreement were completely one sided in favour of the OP and are unfair and discriminatory in nature. Based upon facts of the case, DG has reported that the OP in the present cases continues to impose unfair and discriminatory conditions on rendering services in the relevant market.

4.5 According to DG, the conduct and action of DLF in the present case has all similarities with the case no. 19 of 2010 investigated earlier and decided by the Commission. Therefore, the findings in the case no. 19 of 2010 are fully applicable to the present cases in question.

5. The Commission considered the investigation report of DG in its meetings and decided to seek the objections of the parties on the same.

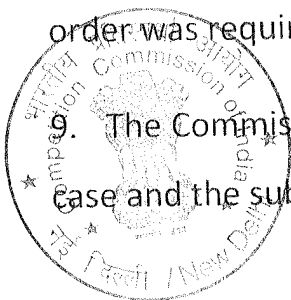


6. The counsel for the Opposite Party vide his letter dated 23.01.2012 submitted that the instant cases relate to an apartment in the project namely 'The Belaire', in respect of which the Commission has already passed order dated 12.08.2011. It has also been stated that the Commission had issued limited directions to the DG in the present cases to find out if any additional points were taken in the present information as compared to the issues already dealt in the case no. 19 of 2010. After completing investigation, DG has also concluded in his report that the present information pertain to the same project 'Belaire' and various issues raised in the instant case has already been investigated in case no. 19 of 2010 and are found to be similar.

7. It was further submitted by the OP that in the circumstances, the objections already filed by the OP to the DG's report filed in case no. 19 of 2010 be considered as its objection to the present reports of DG also. It has also been submitted that since the agreements in the present cases relate to the same project as dealt with in the order of the Commission in case no. 19 of 2010, no separate order is again required to be passed in the present cases.

8. The OP also submitted that in another case being case no. 55 of 2010 filed by Mili Marketing Private Limited, which also related to an agreement for sale of an apartment in the same project 'Belaire', the inquiry was closed by order dated 14.11.2011, after observing that since the same issues had already been dealt with in the order of the Commission in case no. 19 of 2010, no separate order was required.

9. The Commission has carefully gone through the findings of DG, facts of the case and the submissions made by the Opposite Party.

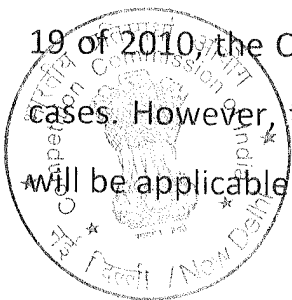


9.1 On a careful consideration of the materials available on record, the Commission observes that before this case, upon directions of the Commission, DG had also carried out investigation in Case No. 19 of 2010 filed by Belaire Owners' Association and submitted his report. The order of the Commission was passed in Case No. 19 of 2010 on 12.08.2011. In that order finding that the OP has abused its dominant position, besides imposing penalty, the Commission had also passed 'cease and desist' order, inter-alia, asking the OP to refrain from indulging in unfair and discriminatory practices.

9.2 In another case related to the same property, against an information filed by Mili Marketing Private Limited, the Commission had also passed order on 14.11.2011 stating that since the facts of the case were identical with case no. 19 of 2010 and since the informant was a member of the same association, there was no need to pass any separate order in the case.

9.3 The Commission also notes that the DG has reported that the case of the two informants herein pertain to the same project," Belaire" and various issues raised in these two information have already been investigated in case no. 19 of 2010 and are found to be similar. Holding that the OP has abused its position of dominance, DG has also requested to take cognizance of earlier investigation report while taking a final decision in the matter.

10. Based upon above, the Commission holds that the order dated 12.08.2011 passed in case no. 19 of 2010 squarely covers the facts and issues of these cases as well. Since penalty has already been imposed upon the OP in case no. 19 of 2010, the Commission does not find it fit to impose penalty in these two cases. However, the order of 'cease and desist' passed in case no. 19 of 2010 will be applicable in these two cases also.



11. The instant case is disposed of accordingly.

12. The Secretary is directed to send a copy of the order to the parties in terms of the relevant provisions of the Act and the Regulations made thereunder.

Sd/-
Member (R)

Sd/-
Member (GG)

Sd/-
Member (G)

Sd/-
Member (AG)

Sd/-
Member (T)

Sd/-
Member (D)

Sd/-
Chairperson

