BEFORE THE

COMPETITION COMMISSION OF INDIA

Case No. 18 of 2010

Information filed on 05.05.2010

and Case nos. 24, 30, 31, 32, 33, 34 & 35

Date of Order:29.08.2011

Informants in Case no. 18: DLF Park Place Residents Welfare Association

Informant in Case nos. 24, 30, 31, 32, 33, 34 & 35: Pushkar Dutt Sharma and Kiran Sharma

Through : M.L. Lahoty, Advocate, Supreme Court of India

Opposite Parties: DLF Home Developers Limited

DLF Limited

(Through: Rajan Narain and Ashok Desai, Advocates)

Haryana Urban Development Authority

Department of Town and Country Planning, State of Haryana

1. Introduction

1.1 Information dated 5.5.2010 under Section 19 of the Competition Act, 2002 (the Act) was received by the Commission in case no. 18 of 2010 from Park Place Residents Welfare Association against DLF Home Developers Ltd. (DLFHDL or Opposite Party -1 or OP-1). Haryana Urban Development Authority (HUDA or Opposite Party -1 or OP-3) and Director Town and Country Planning, State of Haryana (DTCP or Opposite Party – 4 or OP-4) have also been named as respondents.

1.2 Information of similar nature was received by the Commission on different dates from Shri Pushkar Dutt Sharma and Smt. Kiran Sharma in case nos. 24, 30, 31, 32, 33, 34 and 35 of 2010. Information in case nos. 31 and 33 were in respect of the apartment complex, "Belaire" while the rest were in respect of "Park Place". In case nos. 31 and 33 the Opposite Party was M/s DLF Ltd. (DLF or Opposite Party – 2 or OP-2).

1.3 The Commission is of the opinion that the subject matter of all the above information received is substantially the same and several essential aspects have also been covered in its previous order in case no. 19 of 2010. Therefore, the Commission is disposing off the instant cases through a common order.

2. **Gist of Allegations in case no. 18**

2.1 The information contains facts and allegations as under:

2.1.1 M/s DLF Home Developers Ltd. **(OP-1)** has abused its dominant position and has imposed highly arbitrary, unfair and unreasonable conditions on the apartment allottees of the Housing Complex 'the Park Place'.

2.1.2 The action of OP-1has serious adverse effects and ramifications on the rights of the allottees.

2.1.3 Various Government and statutory authorities have allotted land and given licenses, permissions and clearances to OP-1when it is ex-facie clear that the DLF has violated the provisions of various Statutes including Haryana Apartment Ownership Act, 1983, the Punjab Scheduled Roads and Controlled Areas (Restriction of Unregulated Development) Act, 1963 and Haryana Development and Regulation of Urban Areas Rules, 1976.

2.1.4. OP-1has used its position of strength in dictating the terms by which on the one hand it has excluded its obligations and liabilities and on the other hand put the apartment allottees in extremely disadvantageous conditions.

2.1.5 OP-1 announced a Group Housing Complex, named as 'The Park Place' consisting of multi-storeyed residential buildings to be constructed on the land measuring 12.67 acres (approx.) earmarked in Zone 11 and 12, Phase-V in DLF City, Gurgaon, Haryana. That as per the marketing and promotional brochure of DLF, there were to be 13 towers encompassing 19 floors with four Aparments in each floor and the total number of Apartments to be built therein was to be 950. The construction was to be completed within the stipulated period of 30 months and the physical possession as also the Completion Certificate was to be handed over to the apartment allottees. The facts, however, reveal that the original project of 19 floors with 950 apartments, which was the basis of the Apartment allottees booking their respective apartments was altogether scrapped by DLF and on the same very land of 12.67 acres, a new project of 29 floors with 1560 apartments was conceived by the DLF without informing the apartment allottees of the same. The consequence thereof is not only that the areas and facilities originally earmarked for the apartment allottees were substantially compressed/reduced, but the project was also abnormally delayed willfully and deliberately. The serious fall-out of the delay is that the hundreds of apartment allottees who had paid almost 80% - 85% of the total consideration amount have to bear huge financial losses as on the one hand, their hard-earned money was blocked, on the

other hand, they were to wait indefinitely for occupation of their respective Apartments. In fact, it is worse in case of those who have borrowed money from banks and other lenders and have to bear heavy pre-EMI and interest burden. The plight of the apartment allottees occupying the rented premises is even beyond comprehension.

2.1.6 Since the Apartment Buyers'Agreements were signed months after the booking of the Apartment and by that time the allottees collectively had already paid crores (crore = 10 million) of rupees, they hardly had any option but to adhere to the dictates of DLF. Being a dominant undertaking, the DLF devised a standard form of printed "Apartment Buyer's Agreement" for public to book the apartment. A person desirous of booking the Apartment was required to accept and give his assent to the agreement by signing on the dotted line, howsoever onerous and one-sided the clauses of the agreement were. The buyer has no power to negotiate, but merely adheres to the dictated terms and consequently for all practical purposes there is hardly a relationship between the parties as one of the contract.

2.1.7 A perusal of this standard form would reveal that due to disparity between the bargaining power and the status of the parties, DLF has imposed upon the buyers, the terms which on one

hand unfairly exempt and wholly exclude DLF from any liability under the agreement, on the other hand fasten the liability of non-performance/delay in performance on the buyer alone.

2.1.8 The very first page of the said agreement at the threshold stage altogether ousts the apartment allottees by stipulating that DLF has the absolute right to reject and refuse to execute any Apartment Buyer's Agreement without assigning any reason, cause or explanation to the intending allottee, however justified are the corrections/ alterations/modifications in the agreement. Thus, there is neither any scope of discussion, nor variation in the terms of the agreement. This provision makes it clear that it is rather a misnomer to call this document 'an agreement'.

2.1.9 The Representations show that the DLF neither on the date of announcing the Scheme "The Park Place", nor while executing the Apartment Buyer's Agreement has got approved Layout Plan of Phase-V by the Director, Town & Country Planning, Haryana, Chandigarh although mandated by the statutory provisions of the Punjab Scheduled Roads and controlled Areas Restriction of unregulated Development Act, 1963. The DLF's decision to announce the Scheme, execute the agreement and carry out the construction without the approved Layout Plan has serious irretrievable fall-outs for which the entire liability in normal course

would fall on DLF, but the disastrous consequences have manipulatively been shifted to the unassuming allottees. Further, the tentative/proposed Layout Plan which is annexed as Annexure-1 to the agreement on page 37, stifles the voice of the buyers by inserting the waiver clause that no consent of the apartment allottee is at all required, if any change or condition is imposed by the Director, Town and Country Planning, while approving the Layout Plan. This action of DLF in advertising the project and issuing Allotment Letter without even taking the very first step of preparing and submitting the building plans/lay-out plans of the project to the Town Planner is directly in defiance of the decision rendered in the case of Kamal Sood Vs. Universal Ltd. [III (2007) CPJ 7 (NC)] by the National Consumer Disputes Redressal Commission, New Delhi.

2.1.10 The tone and tenor of the agreement suggest that DLF reserves to itself the exclusive and sole discretion not only to change the number of zones but also their earmarked uses from residential to commercial, etc. The land of 12.67 acres earmarked for the multi-storied apartments could even be reduced unilaterally by DLF pursuant to the approval/sanction of the Layout Plan by the Director, Town Planning although the size of the land is one of the focal points and the alluring feature of this high-end residential scheme. The reduction in the area of land also jeopardizes and

affects the apartment allottees who possess the ownership right of the land in question, and not DLF.

2.1.11 Vide clause 1.1, the apartment allottee is to pay sale price for the Super Area of the Apartment and for undivided proportionate share in the land underneath the building on which the Apartment is located. Out of the total payment made by the apartment allottee, DLF has authorized itself vide Clauses 3 and 4 that it will retain 10% of the sale price as earnest money for the entire duration of the construction of the Apartment on the pretext that the apartment allottee complies with the terms of the agreement although the naked truth is that apart from making timely payment, the apartment allottee has no other obligation and it is DLF who is to carry out all the activities from approval of Layout Plan to sanction of the building Plan, to construct the Apartment by adhering to norms and guidelines laid down by the various statutory authorities and provide all the amenities and facilities, which DLF has committed and thereafter to obtain the Completion Certificate. The agreement hardly contains the proportionate liability clause which fastens considerable penalty/damages on DLF for breach in discharge of its obligations.

2.1.12 Since the Apartments are sold without the approval of the Layout/Building Plan, DLF vide Clause 1.6 stipulated that due to the

change in Layout/building Plan, if any amount was to be returned to the apartment allottee, DLF would not refund the said amount, but would retain and adjust this amount in the last installment payable by the apartment allottee. Further, the apartment allottee would not be entitled to any interest on the said amount either. Similarly, if there is a change in the super area at the time of completion of building and issuance of Occupation Certificate although the total price shall be recalculated but the amount, if any is required to be returned, the apartment allottee would not get the refund and rather DLF would retain this amount as well with the right to adjust this refund amount against the final instalment as well. The apartment allottee has also to forego the interest thereon.

2.1.13 As per Clause 1.9, against the total price paid by the apartment allottee, he is promised the ownership right of his Apartment as also prorate ownership right of land beneath the building. Apart from the said right, the apartment allottee has paid and accordingly, has pro-rata right of common areas and facilities within 'the Park Place' and proportionate share of club and other common facilities outside 'the Park Place' as also the Common facilities which may be located anywhere in the said complex. What, however, is surprising is that although the apartment allottee has paid for the proportionate share in the ownership of the said land, it

is DLF which has reserved to itself the sole discretion to modify the ratio with the purpose of complying with Haryana Apartment Ownership Act, 1983.

2.1.14 Similarly, clause 8 also indicates how arbitrary and one-sided the stipulations of the agreement are. While time has been made essence with respect to apartment allottee's obligations to pay the price and perform all other obligations under the agreement, DLF has conveniently relieved itself by not making time as essence for completion in fulfilling its obligations, more particularly, handing over the physical possession of the apartment and Completion Certificate to the apartment allottee. Instead, the arbitrariness and unreasonableness of the Apartment Buyer's Agreement is demonstrated by clause 9.3 where under it is provided that DLF would complete the construction within a stipulated period but the exception to this clause are so wide that apartment allottee is totally at the mercy of DLF. The ground reality thus is that though the stipulated time frame of completion of project has expired, the apartments are neither complete nor the allottees are aware of when they would be able to receive the physical possession thereof.

2.1.15 The plight of the apartment allottee can be well visualized by perusing Clause 9.1 and the manner in which the DLF has used its

dominant position. As the Apartment Buyer's Agreement has been executed without any approval/sanction and /or clearance by the concerned authorities, it is stipulated that in future the apartment allottee shall be at the mercy of DLF who has reserved to itself the right not only to alter/delete/modify building plan, floor plan, but even go to the extent of increasing the number floors and /or number of apartments. This arbitrary power can be exercised by DLF at its own whims even if there is no such direction given by the competent authority. Furthermore, while the common areas and facilities would stand largely compressed on account of increased number of floors, the said clause has absolutely debarred the apartment allottees from claiming any reduction in price occasioned by reduction in the area. The only miniscule right given to the apartment allottee vide Clause 9.2 is that it would receive a mere formal intimation. In case the apartment allottee refuses to give consent, the consequence would be altogether negative as DLF has the discretion to cancel his agreement and to refund the payment made by the apartment allottee that too with the interest @ 9% per annum. This rate of 9% is wholly arbitrary as in case of default by the apartment allottees, the rate of interest/penal interest is as high as 18%.

2.1.16 So far as completion of the project and handing over the possession is concerned; clause 9.3 prescribes a period of three

years from the date of execution of the agreement. Significantly, while the DLF starts collecting the payment from the allottees w.e.f. the date of allotment, it is not at all bothered that its collection of money must be commensurate with the stage-wise completion of the project. Furthermore, the discretion as to when the DLF would execute the agreement also rests solely and entirely with DLF. A reference to Annexure-3 would indicate that while 95% payments have been received within 27 months, the apartment allottee is deprived of its benefits for nine months in case the DLF ultimately meets the projected date of completion.

2.1.17 How unevenly the parties have been placed under the agreement is evident from the yet another arbitrary and unconscionable Clause 10.3 pertaining to the failure of DLF to deliver possession in time. In the event of DLF failing to deliver the possession, the apartment allottee shall give notice to DLF for terminating the agreement. The DLF thereafter has no obligation to refund the amount to the apartment allottee, but would have right to sell the Apartment and only thereafter repay the amount. In the process DLF is neither required to account for the sale proceeds nor even has any obligation to pay interest to the apartment allottee and the apartment allottees has to depend solely on the mercy of DLF.

2.1.18 It is DLF who again has the sole discretion to decide whether to terminate or to pay compensation for its default in completing the project in time. The quantum of compensation has been unilaterally fixed by DLF at the rate of Rs. 5/- per sq.ft (or even Rs.10/- per sq.ft) of the super area which is mere pittance. As is well known for average size super luxury Apartment worth Rs. 1.60 crore, the rental income/interest income would be at least Rs. 50,000 to Rs. 75,000 per month. But the apartment allottee would suffer substantial loss per month if it accepts the rate of Rs 5/- per sq. ft. In the same blush, it is submitted that if an apartment allottee borrows loan from the Bank amounting to Rs.1.2 crore and appropriates the loan amounts towards depositing the instalments, he would pay interest to Bank to the extent of Rs. 1.20 lac per month, while delay caused by the DLF would fetch only 10,000/- per month. Furthermore, the monitory loss would become multiple if the allottee has been living in rental premises in the hope that beyond a date he would not have to pay the hefty rents.

2.1.19 Clause 10.1 and 38 reflect upon the atrocious nature of the terms and conditions as the Company has created an excuse in advance for delaying the project by incorporating a non-specified force-majeur clause. Clause 21 is also inequitable as it not only gives exclusive discretion to DLF to put up additional structure upon the said building but also makes the additional structure the sole

property of the DLF although the ;land beneath the building is owned by the apartment allottee. In the process its ownership rights and other right of use of various facilities are abrogated/affected. Clauses 22 and 23 make serious encroachment on rights of the apartment allottees as although both the land beneath the building and the super areas of the building have been paid by the apartment allottees and for all practical purposes these areas belong to the apartment allottees, yet the DLF unilaterally has reserved to itself the right to mortgage/create lien and thereby raise finance/loan. In an unfortunate event of the DLF not able to repay or liquidate the finance/loan, the apartment allottee will be direct sufferer. Moreover, this Clause is not reconcilable to the provisions of Section 19 of the Haryana Apartment Ownership Act, 1983 as well.

2.1.20 By Clause 31, DLF has acquired an invincible position as it can abrogate all that has been promised to the apartment allottee by a single stroke. The Annexures appended to the agreement describe the apartment area, super area, common area and facilities, Club, etc. as also the nature of equipments, fittings, which the DLF has contractually committed to provide to the apartment allottee. Based on the said commitments, the apartment allottee has taken a conscious decision to enter into the contract and if in exercise of the power under Clause 31 DLF is permitted to unilaterally amend or change these Annexures, nothing would survive so far as the rig

of the apartment allottee are concerned. It shows to what extent DLF has exercised its dominant position in dealing unfairly with the apartment allottees.

2.1.21 What tilts the scale heavily in favour of DLF thereby bringing to the fore the arbitrary mismatch between the buyer and seller is Clause 34 whereby the apartment allottee has been foisted with the liability to pay exorbitant rate of interest in case the allottee fails to pay the instalment in due time i.e 15% for the first 90 days and 18% after 90 days. When this provision is compared to Clause 9.5 the unconscionable nature of the agreement is amply demonstrated as the DLF would pay only Rs.5/- sq. ft. to the allottee for per month delay.

2.1.22 The unfair and deceptive attitude is reflected from the marketing and promotional brochure issued by DLF when compared with the Part E of Annexure-4 to the agreement. While through the Advertisement a declaration is made to the general public that innumerable additional facilities, like, schools, shops and commercial spaces within the complex, club, dispensary, health centre, sports and recreational facilities, etc. would be provided to the allottees, however, Part "E" of the agreement stipulates that DLF shall have absolute discretion and right to decide on the usage.

manner and method of disposal, etc. It is well known that these areas although depicted as the facilities created/provided for the apartment allottees, they are invariably alienated/disposed off to the outside agencies for their commercial exploitation.

2.1.23 There are various other terms and conditions of the Apartment Buyer's Agreement which are whimsical and devised to suit the money raising tendency of DLF. The Schedule of Payment unilaterally drawn up by DLF was not construction specific initially and it was only after the DLF amassed huge funds unmindful of the delay caused in the process, it made the payment plan construction-linked arising out of the compulsion of unilateral increase in the number of floors from 19 to 29. Allottees have also raised serious objections to the unlawful clause whereby the DLF is charging preferential location rates giving rise to discrimination.

2.1.24 DLF from the very beginning has concealed some basic and fundamental information and being ignorant of these basic facts, the allottees have entered into and executed the agreement reposing their total trust and faith on DLF. For example, the information/documents pertaining to one such allottee, M/s RKG Hospitality, are referred to. On 09.11.2006 the erstwhile allottee has applied for allotment by depositing the booking amount of Rs. 15

lakh pursuant whereto on 24.11.2006 the DLF issued Allotment Letter for Apartment No.A-151, The Park Place, DLF City, Gurgaon. A Schedule of Payment for the captioned property was also sent. According to the said Schedule, the buyer was obligated upon to remit 95% of the dues within 27 months of booking, namely, by 10.02.2010. The remaining 5% was to be paid on receipt of Occupation Certificate.

2.1.25 The Apartment Buyer's Agreement was, however, executed and signed on 12.09.2007. By that date, the DLF had already extracted from the allottee an amount of Rs. 55 lakh (approx.) without he being aware of the sweeping terms and conditions contained in the agreement and also without having the knowledge whether the necessary statutory approvals and clearances as also mandatory sanctions were obtained by the DLF from concerned Government Authorities.

2.1.26 It is submitted that primarily because of the initial defaults of DLF in not applying for and obtaining the sanction of the building plan/lay-out plan, crucial time was lost and delay of several months had taken place. This delay was very much foreseeable and within the contemplation of DLF, but DLF deliberately concealed this fact from the apartment allottees. While DLF acted indolently in commencing the construction of apartments, it displayed unusu

alacrity in collecting the instalments of hundreds of crores of rupees from the buyers.

2.1.27 After keeping the buyers in dark for more than 15 months, DLF gave severe jolt to the buyers by intimating on 18.02.2008 that there was delay in approvals and that even the construction could not take off in time. By that time, the DLF illegally enriched itself by hundreds of crore of rupees by collecting its timely instalments from scores of buyers. The naked truth, therefore, is that before a single brick was laid, the buyers had already paid instalments of January, 07, March,07, May, 07, Aug., 07 Nov., 07 and Feb., 08. Apart from paying six instalments, the allotees have also paid application money as also the security deposit. The amount thus received by DLF was more than 50% of the total consideration.

2.1.28 The DLF illegally increased the number of floors by a whopping 53%, a degree of violation unheard of, without informing/consulting the allottees. There was no proportionate reduction in the price to be paid by the existing allottees whose rates were calculated purely on the basis of 19 floors and the land beneath it although their rights/entitlements of the common areas and facilities substantially got compressed due to increase in number of floors and additional apartments.

2.1.29 The reduction in the common areas and facilities is in violation of the provisions of the Haryana Apartment Ownership Act, 1983, more particularly, Sections 6 (2) and 13. It is mandated by Section 6 (2) that the common areas and facilities expressed in the declaration shall have a permanent character. Further, without the express consent of the Apartment Owners, the common areas and facilities can never be altered. Section 13 makes it mandatory that the floor plans of the building have to be registered under the Indian Registration Act, 1908. It is the submission of the Petitioner that DLF has violated both the provisions of Sections 6 and 13 apart from other statutory provisions of the 1983 Act.

2.1.30 As for the timely construction of the Apartments, the allottees were in a fix as to whether at all the DLF would be able to fulfil its obligation. Its image as a builder took serious beating as there were newspaper reports that DLF has misappropriated the green and common spaces in DLF City, abandoned the Bengal Project and that it was in serious financial crisis. On 03.06.2009, the RKG Hospitality Private Ltd., one of the members of the Petitioner Association, lamented in its communication that the project had already been delayed by 8 months in both the cases i.e. "The Belaire" and "The Park Place". RKG also resented that the

number of storeys had unilaterally gone up from 19 to 29. It was very strongly pointed out on behalf of RKG that, *"....on our physical inspection very recently we have found that no construction work is going on at the site in both the projects."* The allottees also conveyed that they had not been shown the Lay-out Plan either at the stage of booking or the sanctioned plan and deviations made by the Town Planner at the later stage. In its well intentioned communication disapproving the inaction of the DLF, the RKG reserved its right to make further relevant queries vis-à-vis the Projects which may materially affect their units/flats, the period of delivery viz. the status of the external development work, the position of the various Sinking Funds under the Haryana Development and Regulation of Urban Areas Rules, 1976, as also the availability of funds earmarked for these projects to complete and finish the said projects as per projections.

2.1.31 On 15.06.2007, in what may be called a clear admission of delay DLF pleaded with one of the apartment allottees, namely, Apartment No. PPNO94 in "DLF Park Place" that the delay was not intentional and attempted to attribute the cause of delay to the clearances pertaining to the environment and forest. The DLF justified its default by citing that it had not raised any demand in last two weeks due to the delay. On 30.07.200, the DLF yet again admitted that there was a delay and gave hollow assurance the

allottee that the property would be handed over in 2 and 1/2 years from the date of execution of the agreement. It would be pertinent to mention that the DLF had not even executed the agreement by this date and was happily ensconced in its position by collecting huge money from the buyer without doing anything.

2.1.32 In reply dated 07.07.2009 of DLF with respect to the arbitrary and unilateral increase in the number of floors, the DLF took refuge in Clause 9.1 of the Apartment Buyer's Agreement. The arbitrariness and unfairness of the said clause has already been highlighted hereinabove. The allottees, in this arrangement which is tailor made to cater to the whims and fancies of the builder, are made to sign on the dotted lines and have no say whatsoever. In its reply, without explaining the delay, DLF made ill-founded promise that it would deliver the possession within the time frame. As if it was doing a great service to the allottees, DLF boasted that even if there was delay, compensation @ Rs.5 per sq.ft. per month was already stipulated to meet the plight of the allottees. In an admission that lay-out plans/building plans were not shown to the allottee, the DLF agreed that the same could be verified by any authorized representative of RKG.

2.1.33 On 27.07.2009, RKG, expressing its disapproval of the stand taken by the DLF, rejoined that Apartment Buyer's Agreement was unfair, unreasonable and unconscionable. The allottee had no choice but to sign on dotted lines. The fallacy of the compensation @ Rs.5 per sq. ft. was brought to the fore by the RKG pointing out that the project may be delayed indefinitely by paying a pittance of Rs.10,000 a month for a 2,000 sq. ft flat.

2.1.34 On 25.08.2009, the DLF responded stating that the buyer had signed the agreement after going through and understanding the contents thereof and as such no objection could be raised that the agreement was one-sided and unconscionable. The tone and tenor of the response suggest that DLF is not bothered about the plight of the hapless allottees and that it only wants to reap benefits from the format agreements which it has dictated being in dominant position. DLF, however, reiterated its offer to get the building plans inspected/verified by the authorized representative of RKG.

2.1.35 On 18.09.2009, the representatives of the RKG visited the office of the DLF for the purpose of verification/inspection of the building plans only to learn that the DLF was only providing lip services. The representatives were told by DLF officer that he did

not have the sanctioned building plans. However, the perusal of title deeds, licenses, etc. revealed that various companies/entities were involved in the transaction. On 21.09.2009, RKG conveyed all of their concerns to DLF. However, DLF ignored the issue of inspection of building plan/layout plan and sent the communication dated 24.11.2009 the contents whereof were all self-praises. DLF also vaguely referred to some 'revised height', which was very shocking because there was no such information ever sent to the allottee, nor was it a willing consentee to any such illegal proposition. The enormous delay caused in the completion of the project was dismissed as "slight delay" by DLF.

2.1.36 Although the licenses for lay-out plan had been issued to different companies/subsidiaries of DLF, no link document in respect thereof was available. While the discount given to the prospective buyers was as high as Rs.500 per sq. ft., the DLF offered a petty Rs.250 per sq. ft. to the erstwhile buyers. The buyers of the Apartments who invested huge amount of money starting from October, 2006 in 'The Belaire' and November, 2006 in 'DLF Park Place' had been put to a disadvantageous position vis-à-vis prospective buyers in November, 2009 i.e., after a period of 3 years.

2.1.37 On 21.12.2009, RKG raised grievance before the Ministry of Housing and Urban Poverty Alleviation showing the helplessness of the buyers who did not have any option to even opt out as the exit route too tilted in favour of DLF. On 19.02.2010, the Association took grave exception to the conduct of the DLF in addressing the issue too lightly and dismissing the enormous delay caused by it in delivering the possession as 'slight delay'. The Association minced no words in making express its resentment stating that, "In view of the prevailing lucrative discounts being offered to the new customers by you, coupled with the reduced Super Area and proportionate reduction in Common Areas etc for the existing investors due to a 50% increase in the number of floors, it is unfortunate that you have offered a paltry discount of Rs. 125 to Rs 250 per sft only and hence the same is not acceptable, as well. That it is further pertinent to mention that your organization has forced all the buyers in a highly disadvantageous position vis-à-vis to the new buyer (DLF's new re-launch offer). It is unfortunate to note that you have severely jeopardized the interests of all members of the Association by first forcing payment of 85% of the total amount at this stage by withholding information of 18 month delay and thereafter offering heavy lucrative discounts to general public. You have not left any fair exit options to your existing customers to allow them to redeem their losses." "We sincerely hope that you would see the lack of commercial prudence in the aforementioned

offer since effectively for each Customer the return on investment for the project at the aforementioned compensatory rates is around 2% per annum even though for a delay in payment by any investor he is forced to pay between 15-18% per annum." "..... the Company's endeavour to impose a further 10 floors to the building not only reduces the Super Area, common available space etc. drastically but also in effect leads to the incontrovertible conclusion that the original project itself has been shelved...." The Association further lamented that the members were terribly upset with the agreement which the investors had been induced to enter into since it was evidently a highly arbitrary, lopsided and unfair agreement.

2.1.38 As the continuing delay in delivering the possession from the ends of DLF generated strong apprehension in the minds of the buyers as to the very viability of the project, on 15.04.2010, the Petitioner Association applied to the Chief information officer, Department of Town and Country Planning, Chandigarh, Haryana under the Right to Information Act, 2005inter alia seeking information as to (i) the Building plan/lay-out plan submitted by DLF, (ii) The date on which DLF submitted the Building plan/lay out plan, (iii) the number of floors for which the sanction was granted.

2.1.39 DLF has unilaterally increased the height from 19 to 29 floors thereby effectively reducing the quality and value of the project. The increase means that there would be more allottees to the extent of 53% (approx.) of the original scheme jostling for space in the same parcel of land as well as the common area facilities. The original allottees are entitled to a substantial discount to be brought at par with the fresh investors taking into account the benefit from the opportunity cost and interest incurred by the original allottees over a period of three and a half years before the new investors were thrust in.

2.1.40 The Haryana Urban Development Authority (HUDA) has framed under Haryana Urban Development Authority (Execution of Building) Regulation, 1979 which inter-alia specifies various parameters for any building. The maximum FAR therein is 175% of the site area and population density is 100 to 300 persons per acre @ 5 persons per dwelling unit. So far as the maximum height of the building is concerned, the Regulation prescribes that in case of more than 60 mts. height the clearances from the recognized institutions like ITTs, Punjab Engineering College (PEC), Regional Engineering College/National Institute of Technology etc. and for the fire safety clearance from institute of Fire Engineers, Nagpur will be required. There is hardly any material to show that the buildings

of 'The Park Place' are constructed in adherence to the said Regulations.

2.1.41 In the practical analysis, the association is shocked to learn that the aforesaid norms have been blatantly violated. For instance, the population density per acre in the case of Park Place project consisting of 950 units housed in 19 floors is 375 persons per acre which is not permissible being beyond the sanctioned density of 300 persons per acres. The said norms stand breached to a substantial extent in the case of number of floor increased up to 29th floor with 1560 units making the population of density 616 persons per acre which is not legally permissible being in excess of more than 100% of the sanctioned limit. So far as the FAR is concerned, this criterion robs the project of all the legality. As per the permissible FAR 175 % the area with respect to 19 floors with 950 units is 9,65,834 sq. ft. while the super area as per the construction by DLF is 21,50,000 sq. ft. The FAR used in the project thus is 3.89 which is two times more than the permissible FAR of 1.75 as per HUDA rules. In the case of 29 floors construction with 1560 units the super area is 34,92,000 sq. ft. The FAR used in the project in this case will be 6.32 which is approximately 3 ½ times more than the permissible FAR of 1.75.

2.1.42 The illegal and unauthorized height of the building upto 29 floors poses grave threat to the safety and solidity of the entire construction. The petitioner submits that as per the normal engineering rules the foundation of the building is laid out keeping in mind 25% safety norms which means if a building is to be constructed upto 19 floors, the foundation work would be such that the 25% more load can be sustained thereon. This 25% extra cushion is only a safety measures and is never utilized in making extra construction. The DLF however, has increased the height upto 29 floors while the foundation laid out underneath the building is suited only to sustain the load of 19 floors. This flagrant violation of safety measures brings the agreement within the mischief of misrepresentation, inducement and abuse of dominant position.

2.1.43 The Association is not aware whether the requisite clearance pertaining to the height up to 60 mts as required by the HUDA have been obtained from the concerned Authorities and DLF is paying no heed to the inconvenience which the allottees would suffer due to the increase in floors from 19 to 29. Apart from shrinkage of the facilities, the allottees would face the agony of having to bear with the prolonged wait before availing of the elevator facility. For being ferried up and down the Allottees would have to waste considerable time as their turn comes with belated intervals.

2.1.44 The fact that the project could not be completed in the stipulated time was either within the contemplation of the DLF, or it was reasonably foreseeable by DLF from the very threshold stage as the statutory approvals and clearances were not obtained by DLF. The act of DLF in concealing this fact amounts to "suppresio-veri" warranting serious action against DLF.

2.1.45 From the very beginning it was in contemplation of DLF that the project has been inordinately delayed, yet it never informed the apartment allottees of the factum of delay. In the said circumstances, the action of collecting the money is absolutely fraudulent and unwarranted. The DLF is in serious breach, a fact which straightway divests it of all the claims, which it has been staking based on the terms and conditions, especially, in respect of the timely payments and the interest on late payments. DLF made emphatic commitments not only in the agreement but also later on when serious doubts were raised about its capability that it would complete the project within three years from the date of the agreement but all in vain.

2.1.46 The unequal status of the parties needs also to be taken into consideration. Compared to an individual apartment allottee, both in size and resources, DLF occupied prominent position, but DLF abused its said position being "bigger and better party" both in executing the agreement and while implementing its obligations under the contract.

2.1.47 The acts and deeds of DLF are "*culpa-grave*" both in attracting the buyers by making promises in the colourful brochure/advertisement to enter into the contract only to be followed by gross carelessness in performance of the contract. That in the present form with the sweeping phraseology the agreement is heavily weighted in favour of DLF. Taking shelter in the expression "sole discretion" DLF or any other similarly situated builder can act arbitrarily without assigning any reason for its inaction, delay in action, etc. and yet disown its responsibility or liability arising there from. Per-se it is being an abuse of dominant position by the DLF. The various clauses indicated hereinabove of the agreement and the action of DLF pursuant thereto are ex-facie unfair and discriminatory attracting the provisions of Section 4 of the Competition Act, 2002 (Act 12 of 2003).

2.1.48 The Association fails to understand how the various Government Agencies, more particularly, HUDA has approved and permitted DLF to act in this illegal unfair and irrational manner.

2.2 Gist of allegations in case nos. 24, 30, 32, 34 and 35

2.2.1 A considerable part of the information reiterated the allegations made in the information filed by DLF Park Place Residents Welfare Association, as have been given in detail above. The same are not repeated for the sake of brevity. Some of the additional facts particular to the information filed in the above mentioned 5 cases are given in the following paras.

2.2.2 DLF Home Developers Limited (DLF HDL) announced a Group Housing Complex, named as 'The Park Place' consisting of multi-storied residential building in Zone 11 & 12, Phase-V in DLF City, Gurgaon, Haryana. One of the agents/brokers of DLF group, M/s Focus Consultants, having its office at C-10, Green Park Extension, New Delhi, gave a rosy picture of the Park Place. Believing the contents of brochure, assurances and advertisements, the informant booked five apartments in the DLF Park Place (consisting of two complexes -Park Heights and Park Towers) and also paid Rs. 15 lac for each of the apartments. DLF Home

Developers Limited accepted the booking and allotted the Apartment Nos. No. B-042 in DLF Park Heights and No.J-32 -J041, J-042, J-051, in DLF Park Tower of DLF Park Place vide allotment letters issued in November 2006.

2.2.3 The Apartment Buyer's Agreement was signed months after the booking and by that time the informant had already paid about 27.5% of the price. Therefore, at the time of signing the agreement, the informant hardly had any option but to adhere to the dictates of DLF. The facts reveal that the original project of 19 floors, which was the basis of the informant booking his apartments, was altogether scrapped and on the same very land, a new project of 29 floor was conceived without obtaining any consent from the informant.

2.2.4 Since the consequence thereof is not only that the areas and facilities originally earmarked for the information provider were substantially compressed/reduced but the project was also abnormally delayed willfully and deliberately, the information provider strongly protested and requested the company to refund his money with interest as he was not interested in the new project consisting of 29 Floors. However, instead of correcting and making amends for its illegal activities, DLF cancelled all the five Apartment Buyer's Agreements executed with the informant and thereafter issued cheques of refund

after unlawfully and arbitrarily deducting huge amount on the pretext of Earnest Money, interest on delayed payment and brokerage, which was highly unfair considering the company had scrapped the project in which the informant had booked his apartment. Moreover, when the informant was not interested in the new project of 29 floors, the question of delayed payment as well as the interest thereon did not arise.

2.2.5 It was averred that being a dominant undertaking, the company has devised a standard form of printed "Apartment Buyer's Agreement" and the informant was required to accept the same *in toto* and give his assent to the agreement by signing on the dotted line, how so ever onerous and one-sided are the clauses of the agreement. Further, a perusal of this standard form would reveal that due to disparity between the bargaining power and the status of the parties, the company has imposed upon the buyers terms which on one hand unfairly exempt and wholly exclude the company from any liability under the agreement, while on the other hand fasten the liability of non-performance/delay in performance on the buyer alone..

2.3 Gist of allegations in case nos. 31and 33

2.3.1 The information in these two cases was in respect of the project named "Belaire" launched by DLF Ltd. (OP-2). The informant had applied for apartments in both "Park Place" and "Belaire". As stated in the beginning, this Commission has dealt with the entire gamut of issues involved with "Belaire" in its order in case no. 19 of 2010. As will be seen ahead, the facts of all the cases covered in this order are substantively same as those in case no. 19. Similarly, the competition concerns are also substantively the same in all these cases. However, since case nos. 31 and 33 pertain to "Belaire", some of the main contents of the information in these 2 cases is given below briefly. Several of the contentions regarding unfairness, one-sidedness and disadvantageous aspects of the Apartment Buyers' Agreement and the overall conduct of the OP-2 remains the same as detailed above in respect of "Park Place" and are hence not repeated. From the facts of allegations mentioned below, it can be seen how their nature is identical to the allegations in all other cases mentioned above as well as those in case no. 19.

2.3.2 It was stated that DLF Limited announced a Group Housing Complex, named as 'Belaire' consisting of 5 multi-storied residential building to be constructed on the land measuring 6.67 acres (approx.) earmarked in Zone 8, Phase-V in DLF City, Gurgaon, Haryana. As per the marketing and promotional Brochure of the

company, each of the five multi-storied buildings was to consist of 19 floors and the total number of apartments to be built therein was to be 368. The construction was to be completed within the stipulated period of 36 months and the physical possession as also the Completion Certificate was to be handed over to the apartment allottees.

2.3.3 Believing the contents of Brochure, the information provider booked Apartment No. A-173 and A-174 in Belaire and also paid Rs. 20 lac (2 million) for each. The company accepted the booking and allotted the said apartments in September 2006. The company collected about 30-35% of the full amount from the informant before the execution of the Apartment Buyers Agreement dated 02.01.2007. As the Apartment Buyer's Agreement was signed months after the booking of the apartment and by that time the information provider had already paid about 30-35% he hardly had any option but to adhere to the dictates of the company. The facts, however, reveal that the original project of 19 floors with 368 apartments, which was the basis of the information provider booking his apartment, was altogether scrapped by the company and on the same very land of 6.67 acres, a new project of 29 floor with 564 apartments was conceived by the company without obtaining any consent from the information provider of the same.

2.3.4. Representations "B" and "C" which show that the company neither on the date of announcing the Scheme "The Belaire", nor while executing the Apartment Buyer's Agreement had approved Layout Plan of Phase-V by the Director, Town & Country Planning, Haryana, Chandigarh although mandated by the statutory provisions of the Punjab Scheduled Roads and Controlled Areas restriction of Unregulated Development Act, 1963.

2.3.5 Vide Clause 1.1 the information provider is to pay sale price for the Super Area of the Apartment and for undivided proportionate share in the land underneath the building on which the Apartment is located. Out of the payment made by the information provider, the company has authorized itself vide Clauses 3 and 4 that it will retain 10% of the sale price as earnest money for the entire duration of the construction of the apartment on the pretext that the information provider complies with the terms of the agreement although the truth is that apart from making timely payment, the information provider has no other obligation and it is the company who is to carry out all the activities from approval of Layout Plan to sanction of the Building Plan, to construct the apartment by adhering to norms and guidelines laid down by the various statutory authorities and provide all the amenities and facilities, which the company has committed and thereafter to obtain the competition certificate. The agreement hardly contains the proportionate liability

clause which fastens considerable penalty/damages on the company for breach in discharge of its obligations.

2.3.6 Since the Apartments are sold without the approval of the layout/Building Plan, the company vide Clause 1.5 stipulated that due to the change in Layout/Building Plan, if any amount was to be returned to the information provider, the company would not refund the said amount, but would retain and adjust this amount in the last instalment payable by the information provider. Further, the information provider would not be entitled to any interest on the said amount either. Similarly, if there is a change in the super area at the time of completion of building and issuance of occupation Certificate although the total price shall be recalculated but the amount, if any is required to be returned, the information provider would not get the refund and rather the company would retain this amount as well with the right to adjust this refund amount against the final instalment as well. The information provider has also to forego the interest thereon.

2.3.7 As per clause 1.7, against the total price paid by the information provider he is promised the ownership right of his Apartment as also pro-rata ownership right of land beneath the building. Apart from the said right, the information provider has paid and accordingly, has pro-rata right of common areas and facilities within the 'the Bellaire' and

proportionate share of club and other common facilities outside 'the Belaire' as also the Common facilities which may be located anywhere in the said complex.

2.3.8 Similarly, clause 8 also indicates how arbitrary and one-sided the stipulations of the agreement are. While time has been made essence with respect to the information provider's obligations to pay the price and perform all other obligations under the agreement, the company has conveniently relieved itself by not making time as essence for completion in fulfilling its obligations, more particularly, handing over the physical possession of the apartment and Completion Certificate to the information provider. Instead, the arbitrariness and unreasonableness of the Apartment Buyer's Agreement is demonstrated by clause 10.1 whereunder it is provided that the company would complete the construction within a period of two and a half years but the exception to this clause are so wide that the information provider is totally at the mercy of the company.

2.3.9 The clauses of the agreement absolutely debarred the information provider from claiming any reduction in price occasioned by reduction in the area. The only miniscule right given to the information provider vide Clause 9.2 is that he would receive a mere formal intimation. In case the information provider refuses to give consent the

consequence would be altogether negative as the company has the discretion to cancel his agreement and to refund the payment made by him that too with the interest @9% per annum. This rate of 9% is wholly arbitrary as in case of default by the information provider, the rate of interest/penal interest is as high as 18%.

2.3.10 So far as completion of the project and handing over the possession is concerned, Clause 10.1 prescribes a period of three years from the date of execution of the agreement. However, the discretion as to when the company would execute the agreement also rests solely and entirely with the company only. A reference to Annexure-3 would indicate that while 95% payments have been received within 27 months, the information provider is deprived of its benefit for nine months in case the company ultimately meets the Projected dated of completion.

2.3.11 How unevenly the parties have been placed under the agreement is evident from the yet another arbitrary and unconscionable Clause 11.3 pertaining to the failure of the company to deliver possession, in time.

2.3.12 Clause 11.1 reflect upon the atrocious nature of the terms and conditions as the Company has incorporated even non-availability of steel, cement and other building materials under force-majeure clause. Clause 22 is also inequitable as it not only gives exclusive discretion to the company to put up additional structures upon the said building but also makes the additional structure the sole property of the company although the land beneath the building is owned by the information provider. In the process its ownership rights and other right of use of various facilities are abrogated/ affected.

2.3.13 Clauses 23 and 24 make serious encroachment on rights of the information provider as although both the land beneath the building and the super areas of the building have been paid by the information provider and for all practical purposes these areas belong to the information provider yet the company unilaterally has reserved to itself the right to mortgage/create lien and thereby raise finance /loan.

2.3.14 By Clause 32, the company has acquired an invincible position as it can abrogate all that has been promised to the information provider by a single stroke.

2.3.15 What tilts the scale heavily in favour of the company thereby bringing to the fore the arbitrary mismatch between the buyer and seller is Clause 35 whereby the information provider has been foist with the liability to pay exorbitant rate of interest in case the Information provider fails to pay the instalment in due time i.e. 15% for the first 90 days and 18% after 90 days. When this lop-sided provision is compared to Clause 11.4 the unconscionableness of the agreement is amply demonstrated as the company would pay only Rs. 5/- sq. ft. to the information provider for per month delay.

2.3.16 The unfair attitude of OP-2 is reflected from the marketing and promotional brochure issued by the company when compared with the Part E of Annexure-4 to the agreement.

3. Reference to Director General

3.1 The Commission, after considering the available information formed an opinion that a prima-facie case exists and directed under Section 26(1) that investigation be made in the matter by the office of Director General (hereinafter referred to as DG).

4. Investigation

4.1 According to the report of the DG, the issues primarily involved in case no. 18 for determination are as under:

i. Is there a case of abuse of dominance as per provisions of Competition Act, 2002;

ii. Has DLF Home Developers Limited (or DLF as group) engaged itself in practices which may be said to be abusive and against the interest of the consumers in terms of Competition Act, 2002?

4.2 The report mentions that since cases were also referred to the DG for investigation in respect of alleged contravention of the Act by DLF Limited in its project 'The Belaire' and 'New Town Heights', the proceedings in this case were conducted in tandem with the other cases of DLF referred for investigation. DLF Limited and DLF Home Developers Limited filed their submissions vide different letters. The gist of the findings of the DG in case no. 18 is as below.

4.3 The DG report states that as per the provisions of Competition Act, 2002, in order to establish abuse of dominance by an enterprise or a group as defined in the Act, following steps are required:

"i) Determination of Relevant Market with reference to Relevant Product Market and Relevant Geographic Market in terms of Section 19(5) keeping in view the factors mentioned in Section 19(6) and 19 (7).

ii) It needs to be established that the enterprises under investigation enjoys a dominant position in the Relevant Market in terms of Explanation (a) to Section 4 of the Competition Act. Determination of dominance of an enterprise or a group in the relevant market is a pre requisite to enquire into abuse thereof. For determination of position of dominance, all or any of the factors listed in Section 19(4) shall be looked into.

iii) Once determination of above is achieved, then the acts mentioned in Section 4 (2) are to be looked into. In case the enterprises are found to be acting in violations of the acts mentioned in Section 4 (2), the abuse of dominance is established. ***Here, the actions are to be proved and not that the actions also caused AAEC, since once violations are established; the abuse is also established not requiring further establishment of AAEC in the market."***

4.4 Determination of Relevant Market

4.4.1 The DG has dealt with the contentions of the OP-1 in great detail in his report. The essence and substance of the reasoning given by the DG for determination of the relevant market

in this case is the same as those in his report in case no. 19 referred to in this order and is mentioned in detail in the Commission's order in that case. In conclusion, the DG report in the instant case states,

*"Keeping in view these, relevant product market would be **services provided by the developers** for providing **high end apartments** to the customers ..... Keeping in view the provisions of Section 2(u) of the Competition Act, 2002 and the legislative developments discussed above, it can, thus, be said that DLF Limited and its group entities are providing service to the consumers while they are developing and selling apartment units to them within the meaning of the Competition Act, 2002.....the relevant market in this case is geographical area of **Gurgaon** and relevant product is services to the customers in connection with the sale of apartment units through an agreement."*

4.5 Determination of Dominance

4.5.1 The report of the DG has examined the facts in context of provisions of Section 4 read with section 19 (4) of the Act. The report observes,

*"It is noted from the apartment buyers agreements in the case that the agreement is executed between **DLF Home Developers***

Limited and *the information provider with DLF Limited as the confirming party. It is gathered from the annual reports that there are other companies of the group which are involved in the similar business in real estate. As per the annual reports of the DLF Limited, DLF* ***Home Developers Limited and DLF*** *New Gurgaon Home Developers Private Limited are subsidiaries of M/s DLF Limited and M/s DLF Limited is having 82.72% ownership in* ***OP-1and 100% ownership in M/s DLF New Gurgaon Home Developers Private Limited****.....Further, under the description – subsidiary companies /partnerships firms under control of DLF Limited ..... names of* ***DLF Home Developers Limited and M/s*** *DLF New Gurgaon Home Developer Private Limited are also mentioned. Thus, it may be said that* ***DLF Home Developers Limited and*** *DLF New Gurgaon Home Developer Private Limited are under the control of DLF Limited and* ***DLF Home Developers Limited and*** *DLF New Gurgaon Home Developer Private Limited form part of same group along with DLF Limited within the meaning of group as given in the Competition Act. It is noteworthy that the group comprises of 300 other odd Indian subsidiaries companies and similar number of foreign companies."*

4.5.2 For the purpose of examining dominance, the DG report observes,

"What is to be seen whether DLF Limited alone or DLF Limited together with ***DLF Home Developers Limited and*** *DLF New Gurgaon Home Developer Private Limited in group are enjoying position of dominance in the case in terms of Section 4 of the Act. Since the three entities -DLF Limited, DLF Home Developers Limited and DLF New Gurgaon Home Developers Private Limited fall under the definition of group and all are engaged in real estate (residential business), their entire market share is considered here. In order to analyse the factors to establish the dominance of the group as determined above, the factors mentioned in Section 19 (4) of the Act are examined ....."*

4.5.3 The DG has proceeded to give an exhaustive analysis of all the factors for determination of dominance given in section 19 (4) of the Act. This analysis is along the same lines as the one done by the DG in case no. 19 and has been elaborately discussed in this Commission's order in that case. However, it is pertinent to quote from the DG report, which states,

"..... The above analysis of factors in Section 19(4) establish that DLF group is not only enjoying the highest market share, but ***is also enjoying clear advantage over other players as far as size and resources and economic power is concerned. Its economies of scale, resources, and the fact of it being in business since last***

sixty years is also giving it a distinct advantage over the other players in the market. *..... Dominance in law implies that a firm because of its position of economic strength has a high degree of immunity from the normal disciplining forces of rivals' competitive reactions and consumer behaviour. In Hoffmann-La Roche, significantly the Court of justice while defining a position of economic strength, stated,*

'such a position does not preclude some competition.... but enables the undertaking...if not to determine, at least to have an appreciable influence on the conditions under which that competition will develop, and in any case to act largely in disregard of it so long as such conduct does not operate to its detriment.'"

The report further states,

"It is due to its sheer size and resources, market share and economic advantage over its competitors that DLF is not sufficiently constrained by other players operating on the market and has got a significant position of strength by virtue of which it can operate independently of competitive forces (restraints) and can also consumers in its favour in the relevant market in terms of explanation to Section 4 of the Act..... *Due to its position of strength, it can operate independently of the other players in the relevant market. The consumers would also be affected in its favour because of sheer size, sheer resources, its*

economies of scale, which is far ahead of any other existing real estate developer as on date and its superior economic power over its competitors. One important factor in favour of DLF is that it has developed integrated townships in Gurgaon over huge piece of land acquired on early occasion. Thus, if the consumers want to have residential units in Gurgaon or in the township developed by DLF, they have to largely be dependent upon DLF, more so when because of its superior size, resources, market share DLF has built a brand over the years, which affects the consumers in its favour."

On this point, the report concludes,

"Thus, it may be said that DLF Limited along with DLF Home Developers Limited and DLF New Gurgaon Home Developers Private Limited is enjoying a position of dominance in terms of Section 4 of the Act."

4.6 Analysis of Abuse

4.6.1 The DG report contends that once dominance is established, it is to be seen whether the enterprise is also abusing its position of dominance in terms of Section 4(2) (a) of the Act (unfair conditions of sales) as has been alleged in the information.

4.6.2 In order to understand the conduct of the enterprise in the case, the DG has examined four representative case[illegible] serves

the purpose of this order to quote the findings of the DG in respect of one of the four cases as below:

"Case of Lavleen Singal

i) *DLF Home invited application for allotment by sale of residential apartments in project titled DLF Park Place. Mr. Singal booked one 4 bedroom flat (appx. 2,550 sqft) by submitting an application and paying an amount of Rs. 15 lakh by cheque (cheque no. 183457 dated November 9, 2006).*

ii) *Flat no. N094 was allotted and receipt issued by DLF Home along with the allotment letter DLF/CS/N094/1240 dated November 27,2006, that is, within 2 weeks of the application. The receipt also enclosed a payment schedule plan.* ***The Receipt clearly mentioned "this receipt does not entitle you to provisional and/or final allotment.... Till you sign and return the apartment buyer's agreement. ...".***

iii) *DLF Homes demanded additional payment of Rs. 17,40,000/-vide letter dated December 21,2006 as per payment schedule sent with the allotment/booking.*

iv) *Mr. Singal wrote to DLF Home Vide letter dated January 17,2007 bringing to its notice that Receipt clearly mentions "payment does not entitle him to provisional and/or final allotment until the Apartment Buyer Agreement is signed". Instead of paying full amount, payment of Rs. 5,00,000 was made after raising objections that he had not received any apartment buyers agreement till that date.*

v) *DLF sent letter dated January 29,2007 "it will not be possible to accommodate you for long, as these payments are outstanding for quite sometime....."*

vi) *Thereafter, Rs. 12,40,000/- was paid vide cheque dated 08.02.2007.*

vii) *DLF vide letter dated February 16, 2007 clarified that the payments shall be made in time and that the Apartment Buyer's Agreement was under preparation and should be sent".*

viii) *There was another demand notice dated 19.02.2007 from DLF. At that point of time, it was written by Mr. Singal to DLF Homes that already about 20-25% of payment was made and thus further payment 10% was unjustified since that would mean payment of about 1/3rd of the amount when not even preparatory work on ground had started.*

ix) *DLF vide letter dated March 2, 2007 while pointing out the terms of the application stated as under:*

a. This allotment is provisional

b. ***The building plans have not been sanctioned. If the building plans are not sanctioned within one year the money would be refunded with 9% simple interest.***

c. ***If the Apartment Buyer's Agreement is not signed the Earnest Money shall be forfeited.***

x) *Mr. Singal wrote letters to DLF thereafter (February 26, March 26, 2007) expressing concern about the delay in starting any construction activity and inter-alia raising the issue that DLF continues to ask for payment without starting any construction work at site through one-sided buyer-seller contracts, notwithstanding the implicit understanding and faith in DLF name, reputation and past record by altering its past practices and taking advantage of the letter and not spirit of the agreements.*

xi) *DLF acknowledged the letter through a letter dated 11.04.2007 admitting that sanctions were not obtained till date.*

xii) *On 16.04.2007 a final notice was sent to Mr. Singhal referring to two reminders dated 13.03.2007 and 28.03.2007 asking for payment of Rs. 12,15,000.*

xiii) *On June 6, 2007 Mr. Singal wrote to DLF Home on issues like delay in starting construction etc. also highlighting the status of other DLF projects in similar situation alleging collection of more money than project completion. Refund of payments already made with penal interest was also demanded.*

xiv) *On June 15, 2007 DLF Limited (not DLF Homes) responded agreeing to the delay in the commencement of construction,* ***citing reasons of delay in approvals from forest/environment authorities.***

xv) *In another letter dated July 30 & 31st, 2007, DLF stated that construction activity at the site has been commenced and excavation work is in progress.*

xvi) *Finally vide letter dated 18-08-2007 the plot buyer's agreement was sent. The time for handing over of the project was reduced from 3 years to 2.5 years.*

xvii) *On September 6, 2007 the apartment buyers agreement was sent by Mr. Singal to DLF after signing the same stating that he is signing them even when the terms and conditions are one sided.*

xviii) *Sept. 7, 2007 DLF affirmed that installments for May and August 2007 were not demanded "as there was a delay in starting the construction and executing the Agreements. However, for delay in making earlier payments a sum of Rs.1, 16,395 were demanded from Mr. Singal.*

xix) *DLF vide letter dated December 21, 2007 demanded payment of Rs.12,15,000/- with penal interest. The letter clearly mentioned that that delayed payment interest was payable after original due date, calculations of which were to be sent to Mr. Singal after received the actual remittance.*

xx) *DLF Homes vide letter dated February 18, 2008 stating vertical work is already in progress in Lower Basement" demanded*

additional payment . The payment plan was also changed to construction linked plan vide that letter.

xxi) *Mr. Singal realizing that the delivery of possession would be delayed beyond the committed date and even beyond a reasonable period, wrote a letter dated 06.08.2009 to DLF for refund of full money paid with interest and penalty within 15 days from the date of receipt of the letter.*

xxii) *In between the number of floors in towers was increased from 19 to 29.*

xxiii) ***In a letter dated October 29, 2009 of DLF Limited (not DLF Home) it was stated that the possession would be handed over in the 1st quarter of 2011, an 18-month delay from the promised delivery date.***

xxiv) *In a letter dated November 24, 2009 DLF offered a rebate of Rs. 10 psft (as against Rs. 5 psft offered earlier).*

xxv) *DLF Home wrote a letter dated December 4, 2009 to Mr. Singal stating that an amount of Rs. 13,347,801 was due from him with delayed interest of Rs. 2,00,7,801. Timely payment rebate was also announced .Finally vide letter dated 22.02.2010 the allotment was cancelled forfeiting the entire amount of Rs.32,40,00 paid to DLF Homes in spite of letters dated 24.09.2009, 11.11.2009, 14.12.2009 and 21.12.2009 to DLF representing and requesting for refunds. The payments were forfeited as under:*

A. Total amount paid
Rs.32,40,000.00

B. Less: 1) Earnest Money		*Rs.16,20,000.00*
2) Interest on Delayed Payments		*Rs. 24,61,445.00*
3) Brokerage		
Total		*Rs.40,81,445.00*
Balance Refundable	*(A-B)*	*NIL*

4.6.3 The DG report also examined cases of Binay Kumar & Aditya Kumar, Renuka Sehgal, M/s R.K.G. Hospitalities. The report concludes,

"From the above sequence of events it is certain that although the construction for the apartment commenced in the year 2007 and the agreements were executed in the year 2007, the construction is still in progress and the possession has not been handed over to the allottees..... ..... *The moot point is when the alleged unfair conditions for sale of service have been imposed. It is only after May 20, 2009. Since the acts and conducts leading to alleged abuse of dominance have been committed after May 20, 2009 in the case, therefore such acts and conducts can be examined as per the provisions of Section 4 of the Act. The Judgement of Bombay High Court dated 31.03.2010 in the case of CCI vs Kingfisher Airlines Limited is relied upon to support this contention. The Judgement of Bombay High Court, although was challenged in the Apex Court, however, when the matter was taken up the SLP was withdrawn.* ***Further, the conditions continued (and still continues) to be imposed in all agreements signed with the fresh applicants- allottees after May 20,2009*** . *Still on web site of DLF applications are being invited for Park Place with a promise to give possession within 12 months.* ***The character of agreement might continue to be the same as was executed with the information providers. Therefore, the jurisdiction is not an issue on which examination of substantial points of alleged infringement can be ignored."***

4.6.4 According to the DG report, since the issue of jurisdiction does not remain a point of dispute, the facts of the case have to be analysed in order to find out whether there has been abuse of its dominant position by DLF group.

4.6.5 In this regard, the report mentions the following facts which are on record:

A) Commencement of project without Sanction/Approval of the projects

B) Increase in number of floors mid-way

C) Issue of Floor Area Ratio (FAR) and Density Per Acre

D) Time Schedule for completion and possession

E) Forfeiture of Amounts

4.6.6 After examining facts related to all aspects of the above points, the report concludes,

"In terms of Section 4(2) (a) of the Act, the above conditions under which services have been provided by DLF are unfair."

It further states,

"As has been seen above, the terms and conditions of provision of services are loaded heavily in favour of DLF Limited. The Company

has been able to impose the unfair conditions by using (abusing) its dominant position through the agreements (which have been executed or are still being executed with the applicants-allottees). These agreements are unfair on many counts."

4.6.8 The report of the DG has examined various clauses of the Buyers' Agreement in these cases, has elaborately discussed them and determined them as unfair conditions. These are substantially similar to clauses determined as unfair in DG's report in case no. 19 of 2010. For the sake of brevity only a mention is made of the impugned clauses of the agreement, which have been discussed by the DG in these cases:

i) Representation B

ii) Representation C

iii) Representation E

iv) Clause, 1.6, 1.8, 1.9 (No determination of PLC, Super Area, CARPET Area etc.)

V) Clause 4 (Earnest Money)

vi) Clause 9.1

vii) Clause 9.2

viii) Clause 9.3 (Schedule for Possession of the said Apartment)

ix) Clause 10.3 (Failure to deliver Possession by the Company: remedy to the Apartment Allottee)

x) Clause 20 (Alteration of unsold units)

xi) Clause 21 (right has been given to make additional construction to the Company)

xii) Clause 22 and 23 (Company's right to raise finance and Agreement subordinate to mortgage by the Company)

xiii) Clause 31 (DLF has reserved for itself all the right to correct, modify, amend or change all the annexure attached to the agreement at its sole discretion.)

4.6.9 The DG has examined each of the above clauses in detail and concluded,

*"**The unfair conditions as mentioned above have been imposed on account of the market power which DLF enjoys at present in the market.** As per scheme of the Competition Act, 2002, once determination of dominance in relevant market is done, then the acts mentioned in Section 4 (2) are to be looked into. In case the enterprises are found to be acting in violations of the acts mentioned in Section 4 (2), the abuse of dominance is established. **Here, the actions are to be proved and not that the actions also caused AAEC, since once violations are established, the abuse is also established not requiring further establishment of AAEC (appreciable adverse effect on competition) in the market. As may be seen from above, DLF, in exercise of its market power**

has definitely imposed unfair conditions of sale on consumers in violation of Section 4(2)(a) of the Act."

4.6.10 Without prejudice to the above observation, the DG report also contends that acts and conduct like these, would also impact competition and observes,

".....it is noteworthy ***that Market Power can also can come from deception, significantly imperfect or asymmetric information, unduly large transaction costs that usually are associated with consumer protection violations.*** *All these activities affect, influence and distort the offerings that the market provides and thus have implications on competition laws.* ***These activities may change the choices that would be offered to consumers by the functioning of the free market competition****. In the case of Kodak the idea that market power can arise from information that is imperfect or overly complicated has been used as one of the determining factors.....In the case of DLF, the way the company has not disclosed vital information or has kept the same in the thick complicated sets of documents (buyers agreement), it gives rise to significant asymmetry of information. .....****A costly exit scheme as in this case makes competition in the market restricted since the customers will not opt to exit and go for some others schemes looking at the*

costly proposition it involves.....In case, the consumers wanted to exit from the scheme of DLF in this case, they had already paid huge amounts and the fear of forfeiture might have acted as significant barriers, impacting the overall conditions of competition in the market."

4.6.11 The DG has countered arguments of DLF Limited that anticompetitive behaviour is possible only when the alleged violators have market power. It was argued that when barriers to entry are low and new entry into the market is easy even a monopolist has no market power, since any attempt to raise prices will draw into the market new entrants. Thus, if the potential for effective entry is commonplace, market share rarely translates to market power and most allegations of antitrust violations should be dismissed in the face of easy entry.

4.6.12 The DG report counters the above contention of DLF and states that competition laws cannot rely simply on observations of entry alone to conclude that incumbents' market share does not translate to market power. According to the DG, it has been observed that because entrants tend to be overconfident and typically fail without penetrating the market, a reliance on entry rates can be misleading. Further, the report states that in India, the trend of the number of companies which are /were operating in

real estate market India is observed, it will be found that they make an entry, but the entry may not be permanent or for a longer duration. The report observes,

"In the case of DLF, not only the sheer market share, size and resources of the company, its economic power which gives it superior power over all its competitors but also the practices which have led to committing behavioural biases by the consumers which have given it a market power, which has helped it in affecting consumers in its favour and act without being restrained or constrained by the behaviour of the competitors."

4.6.13 As per the DG report, once an enterprise is found to be dominant under provisions of Section 4, it is only be to seen whether it has been committed any act or conduct which may be termed as abusive. There is no requirement of analysis of effects on competition by applying rule of reason since the construct of the provisions of the sections make the violations per-se illegal, if they have been committed by any enterprise.

4.6.14 The DG report also makes a general observation on the environment of real estate regulations in India that has a bearing on the case.

"It is noted that although there is plethora of laws, the implementation has been rather slack. The way construction has commenced without having prior approval from Town Planning Department only goes on to suggest that there is something amiss in implementation of laws."

4.7 In conclusion, the DG report says that looking at the acts and conduct of the Company, they appear to be in violation of the provisions of Section 4(2)(a)(i) of the Act. The conditions imposed upon the applicants and allottees are anti-consumer and antic-competitive. There could be violations of other laws as well in the case since the building has been constructed without taking prior permission, without obtaining prior approvals and there appears to have been violations on account of permissible construction.

4.8 The DG report in case no. 18 of 2010 in respect of DLF Park Place also covers case nos. 24, 30, 32, 34 and 35 of 2010. As regards case nos. 31 and 33 of 2010, which pertain to The Belaire, the report of DG in case no. 19 of 2010 covers all aspects.

5. Hearings before the Commission

5.1 As stated earlier in this order, the facts of case no. 18 of 2010 and case nos. 24, 30 to 35 of 2010 discussed in this order are

substantively same as those in case no. 19 on which this Commission has already passed its order. The concerned parties were asked to argue before the Commission in respect of all the cases during the course of proceedings in respect of case no. 19. The contentions filed, submissions made and oral arguments offered were therefore common to all the cases. These have been given in detail in our order in case no. 19 and hence it is not necessary to repeat them in this order again.

6. Issues

6.1 The Commission has given due consideration to the allegations made in the Information in all the instant cases, the investigation report of the DG, all the written and oral submissions made by the parties concerned along with opinions and analysis of experts relied upon by the Informant and the OPs in course of proceedings in case no. 19 of 2010. These apply equally to the instant cases. This Commission finds that the issues arising from the facts of the instant cases are identical to those in case no. 19 and can be listed as below:

Issue 1: *Do the provisions of Competition Act, 2002 apply to the facts and circumstances of the instant case?*

Issue 2: *What is the relevant market, in the context of section 4 read with section 2 (r), section 19 (5), section 19(6) and section 19(7) of the Competition Act, 2002?*

Issue 3: *Are the Opposite Parties 1 and 2 dominant in the above relevant market, in the context of section 4 read with section 19 (4) of the Competition Act?*

Issue 4: *If the Opposite Parties 1 and 2 are dominant in the relevant market, is there any abuse of its dominant position in the relevant market by these parties?*

6.2 The determination of the above issues by the Commission in case number 19 of 2010 applies squarely to the facts and circumstances of the instant cases. The detailed reasoning and discussion on the above issues given in our order dated 12.8.2011 in case no. 19 apply to the cases under consideration in this order *mutatis mutandis* and are accordingly followed herein.

Issue 1

Do the provisions of Competition Act, 2002 apply to the facts and circumstances of the instant case?

6.3 It was determined in the Commission's order dated 12.8.2011 in case no. 19 of 2010 that the provisions of the Act squarely apply to the facts of the case. The ratio is being followed in these cases.

Issue 2

What is the relevant market, in the context of section 4 read with section 2 (r), section 19 (5), section 19(6) and section 19(7) of the Competition Act, 2002?

6.4 Following the order of the Commission dated 12.8.2011 in case no. 19 of 2010 the Commission has concluded that the apartments in question in the instant cases are also "high-end" considering a complex mix of factors discussed in the order in case no. 19 and for the reasons specified in the said order, the relevant geographic market is Gurgaon, Haryana.

Issue 3

Are the Opposite Parties 1 and 2 *dominant in the above relevant market, in the context of section 4 read with section 19 (4) of the Competition Act?*

6.5 As discussed in detail in the order in case no. 19 dated 12.8.2011 in case no. 19 of 2010, this Commission concludes that DLF Ltd. along with its subsidiaries, is in a dominant position in the relevant market in the context of Section 4 read with Section 19(4) of the Act.

Issue 4

If the Opposite Parties 1 and 2 are dominant in the relevant market, is there any abuse of its dominant position in the relevant market by these parties?

6.6 In view of the detailed reasoning given in the order dated 12.8.2011 in case no. 19 of 2010, this Commission has no doubt that the clauses and conditions as indicated in para 4.6.8 amount to abuse of dominance.

6.7 Therefore, this Commission finds the Opposite Party as subsidiary of DLF group in contravention of section 4 (2) (a) (i) of the Act.

7. Other concerns

7.1 The examination of case no. 19 of 2010 had brought forth several areas of concern, as mentioned in paras 12.1[illegible]

12.114 of that order. It is observed that the facts of the instant cases also substantiate and re-emphasise those concerns.

8. Decision under section 27 of the Competition Act, 2002

8.1 The Commission has concluded that the Opposite Party 1 are in contravention of section 4 (2) (a) (i) by imposing unfair conditions on the sale of its services to consumers.

8.2 In the facts and circumstances of the cases, the Commission has examined the role of Opposite Parties 3 and 4, viz. HUDA and DTCP of Government of Haryana. It is seen that these are agencies or authorities of the State Government whose role is limited to granting various approvals to builders / developers. They are not providing any services of a commercial nature of the kind provided by the DLF group or its competitors. Thus their conduct does not come within the ambit of section 4 of the Act.

8.3 In para 4.6.8 supra, this order indicates various clauses of Buyers' Agreement imposed by DLF Ltd. and its group companies on its consumers / buyers which have been held to be unfair in terms of section 4 (2) (a) (i) of the Act by the DG and hence in contravention of section 4. In view of the above, and in exercise of

powers under section 27 (a) of the Act, the Commission directs DLF Ltd. and its group companies offering services of building / developing:-

i. to cease and desist from formulating and imposing such unfair conditions in its agreements with buyers in Gurgaon.

ii. to suitably modify unfair conditions imposed on its buyers as referred to above, within 3 months of the date of receipt of this order.

8.4 The Commission has already imposed a penalty under section 27 (b) of the Act on DLF Ltd. in case no. 19 of 2010. The nature of contravention of provisions of section 4 is identical in its object and effect in the instant cases and emerges from the position of strength of DLF Ltd. in the same relevant market. Therefore, it will not be appropriate to separately impose penalty again under this clause in the instant cases.

8.5 The Secretary is directed to convey this order to the concerned parties.

Sd/-
Member (R)

Sd/-
Member (GG)

Sd/-
Member (AG)

Sd/-
Member (T)

Sd/-
Chairperson

Certified True Copy

S. P. GAHLAUT
Assistant Director
Competition Commission of India
New Delhi