

COMPETITION COMMISSION OF INDIA

24th January, 2012

Case No. 55/2011

Filed by: Kolkata West International City Buyers',
Welfare Association, Howrah. Informant

Against: i) Kolkata West International City Pvt.Ltd.,
Kolkata;
ii) Kolkata Metropolitan Development
Authority, Bidhannagar, Kolkata. Opp.Party

Order u/s Section 26(2) of the Competition Act, 2002

The informant is an association of allottees of bungalows/twin houses/row houses in the integrated township namely Kolkata West International City Pvt. Ltd., proposed to be developed by OP in the District of Howrah, west Bengal.

The informant has contended that the integrated city project launched by OP1 was first FDI project in housing sector pegged at Rs.2,000 crores to Rs.2,500 crores (in 2005) and was to have everything from housing to hospitals, schools, shopping malls, restaurants i.e. all amenities of modern township. It was to be developed through a tripartite venture involving (i) Indonesia based Salim Group, (ii) Ciputra Group and (iii) NRI Shri Prasoon Mukherjee of Universal Success Group. The land (approx. 390 acres) for the township was leased out by Kolkata Metropolitan Development Authority (KMDA).

The OP1 painted a rosy picture to the public at large through innumerable advertisements and brochures and members of the Informant association and several other persons invested their hard earned money into the project. The project was to be completed by 2008 and the OP1 had received almost 80% to 100% of the total cost of house from allottees by 2008 although the project was at initial stages in 2008. Many representations were made by the allottees to OP1 as well as to the Chief Minister of West Bengal, Urban Development Minister and other authorities but the project was hanging in between and the possession has been handed over to only a few of the allottees, that also without creating infrastructure as promised and without providing connectivity of the township to NH6 as promised.



It is submitted by the informant that the OP No. 1 had made the allottees sign a standard terms & conditions cum allotment agreement and the agreement contained several clauses which were unfair and showed abuse of strength by OP1. Reference was made to clause No. 2.2, 3.1, 3.2, 5.1, 5.3, 6, 6.1, 7.2, 7.5, 7.10 and VI Schedule to the agreement read with clause 4.1 and 4.2.

The informant made a prayer that the Commission should conduct an appropriate inquiry as to how OP2 had allotted land and gave permissions and clearances to OP1 when OP1 ex-facie violated various statutory provisions and abused its position of strength (Para 1).

The informant made following other prayers in the application:-

- a) initiate appropriate inquiry against M/s. Kolkata West international City Pvt. Ltd. including but not limited to the abuse of dominant position by M/s. Kolkata West international City Pvt. Ltd. and such other aspect as this Hon'ble Commission deems appropriate;
- b) direct the respondents to produce the relevant records involving the decision making process culminating into the grant of sanction/approval of the Building Plans/Lay-out Plans;
- c) discontinue forthwith all the unfair and discriminatory clauses imposed upon the buyers by the Respondent No. 1 by abusing its dominant position.
- d) Pass order providing exit option to an Allottee with full refund of money paid by the Allottee, together with interest @ 24% p.a. thereon as well as appropriate compensation towards opportunity cost;
- e) Modify the agreement thereby doing away with the abusive and discriminatory clauses working to the detriment and disadvantage of the Allottees;
- f) Pass order imposing penalty on M/s. Kolkata West International City Pvt. Ltd.;
- g) Pass orders awarding the cost and expenses in favour of the Petitioner Association;
- h) Pass such other or further order(s) as this Hon'ble Commission may deem fit and proper in the facts and circumstances of the present case.

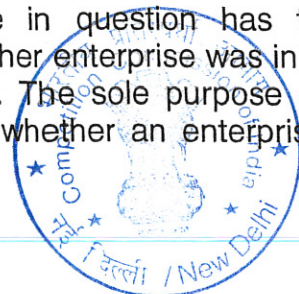
After considering the information furnished by the informant, he was asked to appear before the Commission either himself or through his authorized representative. Shri M.L. Lahoty, Sr. Advocate appeared on behalf of the informant and argued the matter before the Commission.



The Counsel for the informant submitted that the relevant product market in this case was Bungalows and row houses constructed amidst the facilities and amenities in a modern integrated satellite town and the relevant geographic market was Western periphery of Kolkata namely District of Howrah. The Counsel for the applicant sought to bring the case under section 4 of the Competition Act contending that the project in question was a unique project of a township of international standard containing bungalows and row houses alongwith the facilities like Club, Hospital, School etc. and was to be considered as a relevant market in itself. It was uncomparable to other projects as it was the first FDI project in cooperation with renowned international group namely Salim Group. The quantum of investment to be put in the project showed that OP1 was in a position of strength and was a dominant player. He submitted that the dominance of OP1 was established from the kind of investment to be made in the project and the fact that this was the first integrated township to be developed in the west of Distt. of Howrah. He also argued that the geographical market would be the district of Howrah.

In order to consider dominant position, the Commission has to keep in mind explanation (a) to section 4 of the Act. It is thus necessary to consider relevant market both product-wise and geographic-wise. Section 2(r) of the Competition Act provides that the relevant market means the market that may be determined by the Commission with reference to the relevant product market or the relevant geographic market or with reference to both the markets. Section 2(s) defines relevant geographic market as a market comprising the area in which the conditions of competition for supply of goods or provision of services are distinctly homogeneous and can be distinguished from the conditions prevailing in the neighbouring area. Section 2(t) defines the relevant product market as a market comprising of those products or services which are regarded as interchangeable or substitutable by the consumer by reason of characteristics of product or services, their prices and intended use.

It is thus necessary that in order to be in a dominant position, an enterprise must be active in a product market where the products are interchangeable and substitutable by the consumers and the enterprise is in a position of dominance vis-à-vis other players in the market whose products can be substituted against the product of the enterprise in question. This product market can be restricted to a relevant geographic area which means that within the geographic area, there are other players and enterprises with whom enterprise in question has to compete but the enterprise in question vis-à-vis other enterprise was in a dominant position and could dictate the market. The sole purpose of ascertaining the relevant market is to examine whether an enterprise



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was in a dominant position in the alleged market of the product or the services vis-à-vis the competing suppliers and buyers of the product or services.

In a product market of houses, bungalows, what the Commission has to see is whether the consumer could switch to other houses and bungalows in the relevant geographic market without incurring significant additional cost or risk. Thus in case of bungalows and houses, one single township cannot be considered by the Commission as a geographic market and the applicant has to identify the other surrounding areas where the houses and bungalows were available and has to plead how the particular enterprise creating township was a dominant township. Conceptually, the idea of a relevant market implies interchangeability of product & services in a geographic market. Normally, the three main competitive constraints are identified by different jurisdictions namely demand substitutability, supply substitutability and potential competition. Unless the Commission is able to examine the extent of demand substitutability, supply substitutability and the potential competition, the Commission cannot determine the market power of the enterprise. In case of an alleged abuse of dominant position, market of the relevant product is the most important aspect which has to be taken into consideration by the Commission. This presupposes that there was a market which existed in normal competitive conditions and in such a market, an enterprise in question due to its dominance, was having distorting effects/anti competitive effects.

If we consider that the row houses and bungalows within a township to be developed as the relevant market, it is obvious that this relevant market becomes comparable with every other integrated township having some similar features and is developed on the basis of a different plan in nearby areas. We cannot consider a single township project as the only relevant market. All other townships coming up or being developed in the surrounding areas of Distt. of Howrah or within Distt. Howrah would be the part of relevant market. Such of other townships may have clubs, someone may have a golf course, another may have a stadium, one township may have a public school, other township may promise an Engineering College and the third township may promise a medical college and so on. Similarly, one township may promise a market, other township may promise mall, third township may promise an international bazaar and so on. Each township has to be unique in itself because that is how townships are planned by different architects. One cannot say that each planned township has to be considered a market in itself having no substitute.



It is argued that there was no substitute available to the members of the application association since it was an integrated township. Bungalows and row houses with FDI & NRI participation were not being built anywhere else and therefore, the township being developed by OP1 was to be considered as the exclusive relevant product market with no substitute available. Similarly it is argued that west side of Kolkata in Howrah Distt. where the township was being developed was to be considered as a geographic market uncomparable to any other market. Therefore, both the conditions of relevant product market and geographic market were satisfied. The dominance of OP1 was ex-facie made out because there could be no other player in this geographic market and the relevant market.

We consider that the arguments advanced by the informant are misconceived. If the relevant market is to be considered on the basis of uniqueness of the project, then each project being built by different builders anywhere in the country will have to be considered as a relevant market having no substitute and the area where the project is being built, howsoever small it may be, has to be considered as relevant geographic market and the provisions of section 4 would be attracted for each and every building howsoever small or big it may be. We consider that this is not the intent of the Act. The intent of section 4 of Competition Act is to curb anti-competitiveness arising in the market because of a dominant player adopting such practices which kill competition or he abuses his position of dominance because the consumer has no alternative. In housing sector where a consumer wants to purchase a house in row or a bungalow, he can look for several surrounding townships and areas where such houses are available. Schools, club, hospital and market are normally promised and provided in each and every integrated township. We therefore, consider that the relevant product and geographic market cannot be defined in such a narrow manner that each and every housing project started by a builder becomes a sole unsubstitutable market and every builder to be a dominant player, howsoever small his share may be in the housing market in a state or district.

In the present case, the township was being developed at Howrah Amta Road & Bombay Road Crossing and was about 20 kms. Away from the main Kolkata City & 12 kms. Away from Vidyasagar Setu. The project was initially sanctioned only for phase I to be built on 80 acres of land having four cluster of houses viz. A, B, C & D. The informant has failed to give any information of the surrounding townships and other projects and the market share of other market players. The informant has claimed OP1 as a dominant enterprise on the basis of projected investment & the claims made in publicity. It has not even mentioned about other enterprises active in the relevant market.



We consider that informant has failed to make out a prima facie case for investigations. The matter is closed under section 26(2) of the Competition Act.

Secretary is directed to inform all concerned suitably.

Sd/-
Member (G)

Sd/-
Member (GG)

Sd/-
Member (AG)

Sd/-
Member (T)

Sd/-
Member (D)

Sd/-
Chairperson

Certified True Copy



S.P. Gahlaut
23/02/2012
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New Delhi