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Fair Competition
For Greater Good

COMPETITION COMMISSION OF INDIA

Case No. 24 of 2014

In Re:

**Mr. Shyam Vir Singh
E-14, Saket, New Delhi**

Informant

And

**M/s DLF Universal Limited
DLF Centre, Sansad Marg, New Delhi**

Opposite Party

CORAM

**Mr. Ashok Chawla
Chairperson**

**Mr. Anurag Goel
Member**

**Mr. S. L. Bunker
Member**

**Mr. Sudhir Mital
Member**

Present: The Informant Mr. Shyam Vir Singh and his son Shri Abhijeet Singh.



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

The information in this case has been filed by Mr. Shyam Vir Singh (hereinafter referred to as the '**Informant**') on 11.04.2014 under Section 19(1) (a) of the Competition Act, 2002 (hereinafter referred to as the '**Act**') against M/s DLF Universal Limited, New Delhi (hereinafter referred to as the '**Opposite Party**'), *inter alia*, alleging contravention of provisions of Section 4 of the Act.

2. Facts, as gathered from the information, may be briefly noted:

2.1 The Informant is a resident of Saket, New Delhi and the Opposite Party is a subsidiary of M/s DLF Limited¹, a renowned real estate development company in India, with 98.43% share capital holding. The Opposite Party is engaged in the business of development of real estate.

2.2 The Informant's family had booked five units of commercial office space aggregating to 9,688 Sq. Ft. in DLF Corporate Greens project at Sector 74A in Gurgaon developed by the Opposite Party. The details of the said booking are as follow: DCG -4 Flat No. 0107, total area 3,184 Sq. Ft. in the name of Mr. Abhijeet Singh booked on 17.09.2010; DCG-2 Flat No. 0215, total area 1,621 Sq. Ft. in the name of Mr. Abhijeet Singh booked on 26.06.2010; DCG-2 Flat No. 0304, total area 1,621 Sq. Ft. in the name of Mr. Abhijeet Singh booked on 27.08.2010; DCG-2 Flat No. 0305, total area 1,621 Sq. Ft. in the name of Ms. Usha Singh booked on 27.08.2010 and DCG-2 Flat No. 0106, total area 1,621 Sq. Ft. in the name of Ms. Deepika Sangwan booked on 26.06.2010.

2.3 Accordingly, Commercial Office Space Buyers Agreements (hereinafter referred to as the '**Agreement**') were entered into between above said family members of the Informant and the Opposite Party. As per the Informant, the

¹ As per DLF Annual Report for the FY 2012-13.



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possession of the said five commercial office space units was to be handed over between 20.06.2011 to 29.09.2011.

2.4 It is stated in the information that the Opposite Party, which belongs to the DLF Group, is dominant in Gurgaon. In support of this contention the Informant has submitted that between 1981 and 1990, DLF got 57 of the 101 reality project licenses. Further, it is submitted that DLF office segment is nearly 32 million square ft including completed and on-going projects, out of which 15.23 million square ft. is located in Gurgaon. Also, throughout India the land bank of DLF is amounting to 312 million square ft out of which 143 million square feet in Gurgaon alone.

2.5 The Informant has alleged that being a dominant player in commercial and residential real estate sector in Gurgaon, the DLF group has been abusing its dominant position by imposing unfair condition under buyers.

2.6 As per the Informant, some of the conditions of 'the Agreement' as stated below are unfair and abusive.

(i) Para F and R: The Opposite Party may abandon the project without offering any reason and its liability in such case would be limited to refunding the amount of money deposited with simple interest @9% per annum to the buyers:

(ii) Para 9.2: In case of major alteration/modification in the plan; the buyer has to file his/her objections/ non-consent within 30 days and the objections/non-consent of the buyer would not in any way ensure a fair hearing/arbitration while, the Opposite Party on receiving such objection has the freedom to cancel 'the Agreement' unilaterally. Thus, the buyer has no recourse if the Opposite Party decides to make major alterations to the plan after signing of 'the Agreement'.



- (iii) Para 8: The buyers are obliged to pay the sale price and other payments for their booked premises as per the stipulated schedule. However, there is no such obligation on the part of the Opposite Party for giving possession of the commercial units as per the stipulated schedule of 36 months. The Opposite Party has arbitrarily undertaken to pay Rs. 25/- per Sq. Ft. per month as compensation for the period of delay and the compensation would only be adjusted in the final price of the flats and that too without any interest.
- (iv) Para 11.3: In the event of a failure on the part of the Opposite Party to deliver possession within 36 months from the date of allotment, the buyer can only demand his money back by giving 90 days notice for termination of 'the Agreement' and thereafter the Opposite Party will be entitled to re-sell the said premises to another party and refund the amount to the buyer within 90 days from the date of full realisation of the total sale price from the new buyer but that too without interest for the period that the money was used by the Opposite Party. Thus, it is unfair on the part of the Opposite Party to retain the buyer's money without paying any interest rate for its own non-performance.
- (v) Para 14.2: The buyer has to deposit maintenance security calculated @ Rs. 500/- per Sq. Ft. of the super area to the maintenance agency and the deposited amount would earn a simple interest rate equivalent to the interest rate paid by State Bank of India for its one year fixed deposit. But, 'the Agreement' neither explains the rationale as to why the buyer has to remit a security deposit @ Rs.500/- per Sq. Ft. nor does it explain the rationale for paying simple interest rate as paid by SBI for its one year fixed deposit. Also, the Opposite Party has been authorised to cancel the agreement without any prior notice in case of non-payment of increase in the amount of security within 15 days of raising the demand and recover the shortfall from the sale proceeds of the said premises.



(vi) Para 29: If 'the Agreement' is not signed and returned within 30 days by the buyer, the application would be treated as cancelled and earnest money (20% of the total) would be forfeited without notice or reminder. On the contrary, the Opposite Party has the discretion to accept or reject the signed agreement after receiving the same.

(vii) Para 28: Formation of association of owners/building owner's society is the sole prerogative of the Opposite Party.

(viii) Para 32: The Opposite Party has the right to amend/modify the content of Annexures of 'the Agreement' at any time, in effect being able to alter 'the Agreement' materially, in a unilateral and one sided fashion. The buyer is required to pay an interest of 15% - 18% per annum for any delayed payment of instalment at the same time the Opposite Party is required to refund only the amounts received from the buyer without interest or in some cases 9% interest in the event of cancellation of the project and that too after deducting interest received on delayed payments.

2.7 The Informant has also averred that in case of any arbitration, the arbitrator is to be appointed at the sole discretion of the Opposite Party and it may be its own employee and the arbitrator's decision would be binding on both parties.

2.8 The Informant has stated that as per the payment schedule drawn by the Opposite Party, buyer is required to pay 85% cost of the flat till completion of building structure, 5% on installation of MEP equipments, 5% on application of occupation certificate and remaining 5% after possession. As per the Informant, the cost of raising the structure of the building comes to about 40% - 50% of the total cost of the building and not 85% of the total cost of the flat as claimed by the Opposite Party in its payment schedule. Moreover, instalments are drawn not as per the actual progress of the project, but as per the whims of the Opposite Party. The Informant has stated that the



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money collected from the buyers has not been utilised for the completion of the project and has been diverted to other projects of the Opposite Party.

2.9 As per the Informant, owing to considerable delay in the completion of the project the accumulated compensation amount itself is Rs.74,89,920/- till end of March, 2014 while the balance sale price to be paid to the Opposite Party is only Rs.40,35,225/- (minus maintenance security); yet the Opposite Party is not agreeing to adjust the balance sale price against the compensation amount and is forcing him to repay the remaining amount. Further, the Informant has stated that to repay the same his family would have to borrow money at high interest rate while their own money is lying with the seller and it does not attract any interest.

2.10 The Informant has stated that *vide* letter dated 08.09.2011 he had raised some of the above mentioned issues and had sent a communication to the Opposite Party. However, the Opposite Party dismissed the objections *vide* letter dated 01.10.2011 stating that the properties of the Informant were purchased on resale basis from M/s Devinder Gupta & Sons Realtor Pvt. Ltd. The Opposite Party has replied that the Informant had option of reviewing 'the Agreement' before undergoing the said transaction as 'the Agreement' was standard for all the properties in this scheme. In this regard the Informant has submitted that 'the Agreement' was received directly from M/s DLF Universal Ltd. several months after booking of the properties and the buyers of the commercial space had no choice but to sign on the dotted lines otherwise the amount paid till then would be forfeited. As per the Informant, all the payments were made through cheques in favour of M/s DLF Universal Ltd. and not in name of M/s Devinder Gupta & Sons Realtor Pvt. Ltd.

2.11 Based on the above averments, the Informant has prayed the Commission to investigate the conduct of Opposite Party to assess whether it has been abusing its dominant position and has, *inter-alia*, sought the following reliefs:



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- (i) To redraw 'the Agreement' in a fair and equitable manner;
 - (ii) The Opposite Party may be directed to pay the compensation amount @ Rs. 25/- per Sq. Ft. per month and to pay interest, at a rate equivalent to that charged from the buyer;
 - (iii) The Opposite Party may be directed to pay interest to the purchaser in the event of cancellation of the project;
 - (iv) The Opposite Party may be restrained from demanding more money from the buyers till they adjust the penalty amount lying with them towards the cost of the commercial space; and
 - (v) Scrutinise all clauses of 'the Agreement' and determine whether the clauses are just and fair.
3. The Commission has perused the information and heard the Informant at length. From the perusal of information and arguments advanced by the Informant before the Commission, it is clear that this case pertains to the alleged infraction of provisions of Section 4 of Act *i.e.*, abuse of dominant position by the Opposite Party.
4. To examine the alleged contravention of the provisions of Section 4 of the Act, the primary requirement is to define the relevant market first and then to examine whether the Opposite Party is in a dominant position in the relevant market as defined and then to examine its alleged conduct.
5. Section 2 (r) of the Act defines the relevant market as "*the market which 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*".



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6. As per Section 2(t) of the Act, the relevant product market is “*a market comprising all those products or services which are regarded as interchangeable or substitutable by the consumer, by reason of characteristics of the products or services, their prices and intended use*”. The Commission notes that the Informant’s family had booked five commercial office space units aggregating to 9,688 Sq. Ft. in DLF Corporate Greens project and accordingly had entered into commercial office space buyers agreements with the Opposite Party. Thus, the market for the services of development and sale of commercial space appears to be the relevant product market in the instant matter in which the Opposite Party is the seller and the family members of the Informant are buyers. The services of development and sale of commercial space appears to be a distinct product. No other services/products in its category such as development and sale of residential units, development and sale of plots of land etc., can be considered as the substitute of the services for development and sale of commercial space because of its unique physical characteristics and consumer preferences. Thus, the market for ‘*the services of development and sale of commercial space*’ appears to be the relevant product market in this case.

7. Section 2(s) of the Act defines relevant geographic market as “*a market comprising the area in which the conditions of competition for supply of goods or provision of services or demand of goods or services are distinctly homogenous and can be distinguished from the conditions prevailing in the neighbouring areas*”. The Commission observes that owing to certain distinct factors such as availability of land for real estate development, differences in commercial real estate price per sq. ft., relatively low rent for office spaces, proximity to the national capital, connectivity to airport, presence of a large number of IT/ITES firms, availability of residential apartments and other infrastructure facilities, Gurgaon appears to be a distinct geographical market. Accordingly, the relevant geographic market may be considered as the territory of Gurgaon. In view of the above, the relevant market in the instant



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case may be defined as ‘*the market for the services of development and sale of commercial space in Gurgaon*’.

8. Since Opposite Party is a wholly owned subsidiary of M/s DLF Limited and belongs to the DLF Group, dominance of DLF Group in the relevant market is to be examined. From the Draft Red Herring Prospectus of DLF Limited dated May 16, 2013, the Commission observes that DLF Group had sold 23 commercial shopping complexes until December 31, 2012. Out of those 15 commercial shopping complexes were in Gurgaon alone. Besides this, DLF Group has another prominent commercial space project in Gurgaon known as DLF cybercity, which is stated to be one of the largest self sustainable integrated business district in India comprising of Grade A office building, IT parks and IT SEZs with an operational space of approximately 12 million square feet and additional development potential of 5 million square feet. Further, it is observed that DLF Group has two commercial projects under construction in Gurgaon namely Corporate Green with a saleable are of 1.6 million square feet and Horizon centre with a saleable are of 1.2 million square feet, aggregating to about 2.8 million square feet. Further, DLF Group has a significant presence in lease of commercial office space in Gurgaon. It has leased about 14.4 million square feet of commercial space in Gurgaon out of total commercial lease space of 25.4 million square feet spread across India. In addition to the above, DLF Limited has been developing four projects for lease in commercial space in Gurgaon aggregating to about 2.9 million square feet.
9. Based on the above, the Commission is of the *prima facie* opinion that despite the presence of other developer in commercial real estate space in Gurgaon such as, Emmar MGF Land Ltd, Unitech, Spaze Towers Pvt. Ltd, Vatika Ltd, Bestech Indian Pvt. Ltd, JMD Ltd., DLF Group appears to be dominant in the relevant market.



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10. It is the case of the Informant that some of the clauses of 'the Agreement' are unilateral, one sided and unfair which is violative of the provisions of Section 4 of the Act. Such unfair clauses include the Opposite Party can unilaterally abandon of project without giving any reason to the buyers and its liability is limited to refunding the deposited money with 9 % simple interest; the Opposite Party can alter/modify the building plan, etc. without the consent of buyers; the buyer is required to pay an interest of 15% - 18% per annum for any delayed payment of instalment whereas the Opposite Party is to refund only the amounts received from the buyer without interest or in some cases 9% interest in the event of cancellation of the project, no provision for adequate compensation to buyers in case of failure on the part of the Opposite Party to deliver the possession within the stipulated time; unfair and one sided formation of owners' association by the Opposite Party, etc. Having examined the clauses of 'the Agreement' it appears that some of them are unilateral, one sided and loaded in favour of the Opposite Party. Based on the above, the Commission is of the view that the above said conduct of DLF Group, emanating from its dominant position in the relevant market, *prima facie*, amounts to imposition of unfair terms and conditions on the commercial office buyers which is anti-competitive as per the provisions of Section 4(2) (a) (i) of the Act.
11. In view of the foregoing, the Commission is of the view that there exists a *prima facie* case of contravention of provisions of Section 4 of the Act by the Opposite Party and it is a fit case for investigation by the Director General (DG).
12. Accordingly, under the provisions of Section 26(1) of the Act, the Commission directs the DG to cause an investigation into the matter and to complete the investigation within a period of 60 days from the receipt of this order. The DG is also directed to investigate the role of the persons/officials of the Opposite Party who were in charge and their involvement with respect to its alleged conduct.



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13. It may be noted that nothing stated in this order shall tantamount to a final expression of opinion on merits of the case and the DG shall conduct the investigation without being swayed in any manner whatsoever by the observation made herein.
14. The Secretary is directed to send a copy of this order along with the information and the documents filed therewith to the Office of the DG forthwith.

**Sd/-
(Ashok Chawla)
Chairperson**

**Sd/-
(Anurag Goel)
Member**

**Sd/-
(S.L. Bunker)
Member**

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

New Delhi

Date: 23/06/2014