



COMPETITION COMMISSION OF INDIA

Case Nos. 81, 82 & 83 of 2013

Case No. 81 of 2013

In Re:

M/s Moran Plantation Pvt. Ltd.

Informant

And

1. M/s Ambience Private Limited

Opposite Party No. 1

2. State of Haryana

Opposite Party No. 2

WITH

Case No. 82 of 2013

In Re:

M/s Mili Marketing Pvt. Ltd.

Informant

And

1. M/s Ambience Private Limited

Opposite Party No. 1

2. State of Haryana

Opposite Party No. 2



WITH

Case No. 83 of 2013

In Re:

M/s Parasramka Holdings Pvt. Ltd.

Informant

And

1. M/s Ambience Private Limited

Opposite Party No. 1

2. State of Haryana

Opposite Party No. 2

CORAM

**Mr. Ashok Chawla
Chairperson**

**Mr. Anurag Goel
Member**

**Mr. M. L. Tayal
Member**

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



Appearances: Shri Rajiv Kapoor, advocate with Shri Sanjeev Mittal, Director and Authorised Representative of the informant companies for the informants in Case Nos. 81, 82 and 83 of 2013.

Shri Gaurav Mitra and Shri Dhruv Kapur advocates for the opposite party No. 1 in Case Nos. 81, 82 and 83 of 2013.

Order under section 26(2) of the Competition Act, 2002

This common order shall govern the disposal of the informations filed in Case. Nos. 81, 82 and 83 of 2013 as similar allegations and issues are involved in these cases. These informations have been filed by M/s Moran Plantation Pvt. Ltd. (Case No. 81 of 2013), M/s Mili Marketing Pvt. Ltd. (Case No. 82 of 2013) and M/s Parasramka Holdings Pvt. Ltd. (Case No. 83 of 2013) (collectively, 'the informants') under section 19(1)(a) of the Competition Act, 2002 ('the Act') against M/s Ambience Private Limited ('the opposite party No. 1') and the State of Haryana ('the opposite party No. 2') alleging *inter alia* contravention of the provisions of section 4 of the Act by the opposite parties with respect to development of a residential housing project 'Caitriona' in Lagoon Complex, Ambience Island, NH-08, Gurgaon.

Facts

2. Shorn of details, facts- as stated in the information in Case No. 81 of 2013 - may be briefly and illustratively noted as similar facts, allegations and issues are involved in all the matters.

3. It is averred in the information that the opposite party No. 1 announced the project 'Caitriona' during the year 2006, in Lagoon Complex, Ambience Island, NH-08, Gurgaon and had represented through brochures and verbal



assurances and during the meeting with the representative of the informant that the project would be consisting of 4 and 5 BHK apartments as well as 5 BHK + Study, apartments which would be of a super built up area of 7672.14 sq.ft. with two Parking facilities. The booking was made by the opposite party No. 1 in April 2007 and it started collecting the payments since 10.04.2007. It has been pointed out that the Apartment Buyers Agreement ('the Agreement') were nowhere in existence which came to be signed only in the year 2009; to be precise on 27.10.2009, by which time the payment of the tune of more than 40% of the sale consideration was already received by the opposite party No. 1, though the terms in the booking form were that the Agreement would be signed within 30 days of the booking.

4. It is stated that the opposite party No. 1 contemplated in the brochure that cancellation or termination of booking would result in forfeiture of earnest money making it impossible for the innocent customer to even think for leaving out. That the Apartment Buyer Agreement, which finally came into picture in 2009 *i.e.*, after more than two and half years of booking, was full of terms & conditions prejudicial to the interest of the customers and the opposite party No. 1 had reserved to itself all the rights giving it undue advantage over the customer and this agreement was and is totally one sided.

5. It is further alleged that the whole agreement gave only the rights to the opposite party No. 1 and envisaged that even for violation, delays *etc.*, on the part of the opposite party No. 1, ultimately it would be the allottees who would have to face the wrath of law. At every stage, threat of cancellation would always hang upon the allottees if they ever wished to go against whims and fancies of the opposite party No. 1.

6. It has also been pointed out that for every violation on the part of the opposite party No. 1, it would give up its liability / obligation by unilaterally offering Rs. 10/- per sq. ft. per month for the delay as per the Agreement while



the buyers would be put to penal interest of more than 18% to 24% for any violation if they do not make payment on time.

7. It is also alleged that the opposite party No. 1 is in hand in gloves with the opposite party No. 2 who have issued occupation certificate to opposite party No. 1 in haste as has been revealed by the response to the RTI application and it is found that the opposite party No. 1 has been in clear violation of catering to the requirement of building EWS flats and for which it has been granted a period of 12 months, which is in complete violation of law. It is alleged that such flagrant violations are with a view to assisting and facilitating opposite party No. 1 in extracting more and more money from the buyers prematurely as well as putting an end to the delay period running for long. It has further been noticed that the period of one year was undertaken by the opposite party No. 1 to the opposite party No. 2 in December 2012 and the Occupation Certificate was issued on 01.03.2013, whereas the Plans for constructing the 560 numbers of EWS Flats have got sanctioned only in September 2013. Thus, it would be impossible for the opposite party No. 1 to complete even the structures of EWS Flats in a period of three months upto December 2013 and in such a situation, the Occupation Certificate as issued subject to construction of EWS Flats within a period of one year would become otiose and infructuous and in a way would become meaningless. However, whatever be the action taken by the opposite party No. 2 thereafter, it would certainly be prejudicial to the interests of hundreds of buyers who would have moved into the flats by that time. That in the case of DLF too, this Commission had come to a conclusion that the terms of the Apartment Buyers Agreement were one sided and the Commission had recommended corrections/ modifications to the Agreement. Similar action needs to be taken in the present case too, aver the informants.

8. It has been averred that the opposite party No. 1 is not only dominant but is the sole builder to provide seven star living apartments of approximately



8000 sq. ft. area in the vicinity of Delhi and Gurgaon as no other builder was providing such apartments, when the opposite party No. 1 came out with this segment of residential apartments and thus, there is no comparison between DLF Ltd and the opposite party No. 1 as far as dominance is concerned. The opposite party No. 1 is clearly the sole and dominant builder and is thus, categorically abusing its dominance being a well-known builder having constructed the mall, the Ambience Mall at 0 KM distance from Delhi and the present Apartments being in the same vicinity. In fact, the 0 Km from Delhi and seven star living was the sole factor used by the opposite party No. 1 to lure the buyers of a certain class, even by personal invitations.

9. Lastly, it has been stated in the information that the grievances of the informants is fully within the dimension of section 4 of the Act and the opposite party No. 1 is the only builder in the vicinity of Gurgaon who has come up with the apartment of such a big area and providing seven star facilities and thus has no competition otherwise in this particular segment – seven star living apartments and so is the only player in the market. In this way, having complete monopoly over the segment the opposite party No. 1 has played with the buyers at its whims and fancies.

10. Based upon these averments and allegations, the informants have sought the following reliefs:

(a) initiate appropriate inquiry against M/s Ambience Pvt. Limited including but not limited to the abuse of dominant position by M/s Ambience Pvt. Limited and such other aspect as the Commission deems appropriate;

(b) pass order directing discontinuation forthwith of all the arbitrary clauses in the Agreement narrated hereinabove;



(c) pass an order providing exit option to an Allottee with full refund of money paid by the Allottee, together with reasonable interest thereon as well as appropriate compensation towards opportunity cost;

(d) direct the Agreement to stand modified to the extent and in the manner as may be found appropriate;

(e) pass order imposing penalty on M/s Ambience Pvt. Ltd.;

(f) pass an order setting aside the letter of 21.09.2012, thereby allegedly raising the illegal demand of interest;

(g) pass an order setting aside the letter dated 03.09.2013 and directing the opposite party No. 1 not to cancel the allotted flats of the informants as threatened vide letter dated 03.09.2013, which if done would be illegal and unwarranted in the facts and circumstances of the case;

(h) pass an order declaring the apportionment of the amount towards interest to be illegal and direct the opposite party No. 1 to apportion all the payments toward sale consideration only;

(i) pass an order restraining the opposite party No. 1 from taking any steps towards putting the property up for sale or creating any third party interest as threatened by the opposite party No. 1 and/or interfere with the rights of the informants in the said property in any manner whatsoever;

(j) pass an order directing opposite party No. 1 to pay reasonable interest on the amount paid to the opposite party No. 1 so far and remaining with the opposite party No. 1 after the date originally contemplated date of completion by October, 2010;



(k) pass an order directing the opposite party No. 1 to compensate the informants suitably for having put the informants to lot of harassment and agony;

(l) pass an order directing the opposite party No. 1 to charge only at the originally agreed to rates without unilaterally enhancing the rates upon which the agreement was entered into and according to which the payments were also made and accepted till date;

(m) pass an order declaring charging of car parking charges to be illegal and directing the opposite party No. 1 to refund the amount so received along with reasonable interest from the date of payment till the date of realization;

(n) pass an order directing the opposite party No. 2 to cancel the Occupation Certificate dated 01.03.2013 as issued by it without completion and construction of EWS flats; and

(o) may pass any other order in favour of the informants as the Commission may deem it fit and proper in the facts and circumstances of the case.

11. The Commission has carefully perused the informations and the material available on record including the written submissions filed by the counsel for the informants. The Commission also heard the counsel appearing for the opposite party No. 1.

12. The allegations of the informants pertain to alleged abuse of dominant position by the opposite party No. 1 in allotment of residential apartments in the project 'Caitriona' developed by the opposite party No. 1 in Gurgaon. From the averments and allegations made in the informations, the relevant



product market appears to be the market of services for development and sale of residential units.

13. On the issue of relevant geographic market, the Commission notes that as per the scheme of the Act the relevant geographic market comprises the area in which the condition of competition for provision of services are distinctly homogeneous and can be distinguished from the conditions prevailing in neighbouring area. In this case, the services for development and sale of residential units provided by the opposite party No. 1 and other developers/builders in Gurgaon are distinct than that of neighbouring area such as Delhi, Noida *etc.* because of several reasons such as distance of Gurgaon from any other sub-region of NCR, lower cost per sq. ft. compared to Delhi, buyer preference to reside in Gurgaon, proximity to a large number of corporate offices *etc.* Thus, the relevant geographic market in these cases appears to be the geographic area of Gurgaon.

14. Thus, the relevant market in the present case is '*the market for the services of development and sale of residential units in the geographical area of Gurgaon*'.

15. The informants, however, have described the project under consideration as 'very high end' apartment consisting of seven star facilities, fully air conditioned building right from the entry to lobby/ reception area and providing the apartment of 8000 sq. ft. with no other builder available to provide such facilities in the area. In the agreement, the project has been described as a state of art luxury residential complex.

16. No material was placed on record by the informants to support such delineation of market. In this connection, it may be pointed out that in *Belair Owners' Association v. DLF Limited, HUDA & Ors.*, Case No. 19 of 2010, the Commission delineated the relevant market as the market for services of



developer/ builder in respect of high-end residential properties in Gurgaon. In the said relevant market, DLF was found to be in a dominant position. It appears that the informants by using the phrase ‘very high end’ are seeking to delineate the relevant market in a very narrow, abstract and artificial manner to distinguish the relevant market from *DLF* case, without giving any details for differentiating the relevant product. In this connection, it is pertinent to mention that in *DLF* case, the Commission observed that ‘high-end’ is not a function of size alone. It is a complex mix of factors such as size, reputation of the location, characteristics of neighborhood, quality of construction *etc.*, that go into considering a dwelling unit as ‘high- end’ or otherwise.

17. The Commission notes that irrespective of the manner in which relevant market is defined *i.e.*, either in a broad manner or narrow manner, the opposite party No. 1 does not appear to be in a dominant position because of presence of many big real estate developers in Gurgaon as submitted by the counsel appearing for the opposite party No. 1 during the course of arguments. This has not been denied or disputed by the counsel appearing for the informants. The counsel appearing for the opposite party No. 1 has also given instances of the developers who are operating projects of comparable size *i.e.* 8000 sq. ft. (as is the size of the project in the present case).

18. Since the opposite party No. 1 does not appear to be in a dominant position in the relevant market, the question of abuse of dominant position as alleged by the informants does not arise.

19. Looked at from any angle, the Commission is of opinion that no case of contravention of the provisions of section 4 of the Act is made out against the opposite parties and the informations are ordered to be closed forthwith in terms of the provisions contained in section 26(2) of the Act.

20. It is ordered accordingly.



21. The Secretary is directed to inform the parties accordingly.

Sd/-
(Ashok Chawla)
Chairperson

Sd/-
(Anurag Goel)
Member

Sd/-
(M. L. Tayal)
Member

Sd/-
(S. L. Bunker)
Member

New Delhi

Date: 04/03/2014