

COMPETITION COMMISSION OF INDIA

Case No. 10 of 2011

Dated: 25.05.2011

M/s Rajarhat Welfare Association & Anr. Informants

v.

DLF Commercial Complexes Ltd. & Ors. Opposite Parties

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

The present information has been filed under section 19(1) (a) of the Competition Act, 2002 ('the Act') by M/s Rajarhat Welfare Association ('the informant No.1') and Shri Rajendra Kumar Vidhawan ('the informant No.2') on 04.03.2011 against M/s DLF Commercial Complexes Ltd. ('the opposite party No.1') and others alleging, *inter alia*, abuse of dominant position in contravention of the provisions of section 4 of the Act.

2. The facts as stated in the information, in brief, are as under:

- 2.1 The informant No.1 is a society registered under the West Bengal Societies Registration Act, 1961 and is stated to be constituted for the welfare of its members who are intending purchasers of commercial units in different multi-storied projects in the Rajarhat area. The informant No.2 is stated to be the president of the informant association.
- 2.2 It has been stated in the information that M/s DLF Commercial Complexes Ltd. ('the opposite party No.1') and M/s DLF Retail Developers Limited ('the opposite party No.2') [to be referred to as 'DLF' collectively hereinafter] are stated to be the largest developers of properties operating in India. The State of West Bengal has been impleaded as the opposite party No.3. Shri Sudhir Sehgal ('the opposite party No.4') and Shri Sanjay Pandey ('the opposite party No.5') are stated to be the directors of the opposite party No.2. Shri Kushal Pal Singh ('the opposite party No.6') is stated to be the marketing head of the opposite party No.2. Shri Rajiv Singh ('the opposite party No.7') and Ms. Priya Singh ('the opposite party No.8') are alleged to be the persons who actually control the business and affairs of the opposite party Nos. 1 and 2. It is further averred that the opposite party Nos. 4 to 8 are the persons responsible for the business and affairs of the opposite party Nos. 1 and 2.

2.3 It has been stated that in or about January, 2008, the opposite party Nos. 1 and 2 issued an advertisement containing details of commercial/retail outlets to be constructed on the land measuring 3 acres (approx.) in Rajarhat, under the name and style 'DLF Tower'. It has been alleged that the opposite party No.1 held itself out as the authorized agent to receive bookings for the said project and the bookings were accordingly opened in or around the year, 2008.

2.4 It has been further stated in the information that the members of the informant association approached the opposite party Nos. 1 and 2 with the object of setting up businesses in the proposed complex. During the course of the meetings with the opposite party Nos. 1 and 2 in their Office at New Delhi, the opposite party Nos. 1 and 2 represented to the members of the informant association as follows:

- i. *DLF had acquired premises bearing Nos. 02-124, Street No. 124, New Town, Kolkata, P.S. Rajarhat, 24 Paraganas (North) from West Bengal Housing Infrastructure Development Corporation Limited and intends to construct a state of the art complex called DLF Galleria in the said plot comprising of shops, office space, parking space and other commercial space.*
- ii. *The opposite party Nos. 1 and 2 have obtained sanctioned building plan from the concerned municipality and necessary approvals from other statutory bodies.*

- iii. The opposite party Nos. 1 and 2 were in a position to commence the work of construction immediately.*
- iv. Delivery and possession would be given within a period of 30 months from the date of booking.*
- v. The intending purchasers must immediately pay Rs. 5 Lakhs, Rs. 10 Lakhs and Rs. 15 Lakhs for booking offices, small size shops and big size shops respectively to avail discounts and benefits and receive an allotment in their names.*
- vi. The application for allotment of a unit would have to be made in the prescribed form to be supplied by DLF.*

2.5 It has been alleged in the information that based upon the aforesaid representations made by the opposite party Nos. 1 and 2 the members of the informant association obtained a copy of the application form. It is alleged that the said application form is a standard form contract containing the terms and conditions devised by DLF which need to be complied with by the person interested to book an apartment. It is further alleged that a person desirous of booking an apartment is required to accept the said terms and conditions and is bound to give his assent thereto even though the said conditions are onerous and unilateral.

2.6 It has been also alleged that the intending purchasers are left with no discretion to negotiate and due to disparity in the bargaining power are forced to adhere

to the terms and conditions dictated by the opposite party Nos. 1 and 2.

- 2.7 The informants have referred to the various clauses of the said application form-*cum*-allotment letter which are alleged to be unconscionable and one-sided.
- 2.8 It has been further averred in the information that the members of the informant association were left with no choice due to the dominant position of DLF and accordingly they applied in the prescribed format. It has been stated in the information that upon receipt of the applications and the requisite fee from members of the informant association, the company issued allotment letters in favour of members alongwith the receipts and time linked payment schedule.
- 2.9 It has been further alleged that DLF again abusing its dominant position reiterated in the receipts that even the issuance of allotment letter does not entitle an allottee of a provisional or final allotment of the proposed property. It was stipulated in the receipt that terms and conditions stated in the application form shall govern the allottee and the company till such time a buyer agreement is finally executed.
- 2.10 It has been alleged that even though 90% of the members of the informant association have made payments in excess of 35% of their unit cost within a

period of four months from the date of issuance of the allotment letter, no construction activity has started at all at the site even after a lapse of four months from the date of issuance of the allotment letter.

- 2.11 It has been alleged that the opposite party Nos. 1 and 2 even purported to cancel the allotments made in favour of the members forfeiting 20% of the unit cost of each member under clause 11 of the application form-*cum*-allotment letter taking advantage of their superior dominant position.
- 2.12 It has been stated that in or about August, 2008 the members of the informant association received the commercial buyer agreement from the company contradicting its earlier purported action to cancel the allotments.
- 2.13 It has been alleged that even this Commercial Space Buyers' Agreement is a standard printed form of agreement leaving no space for negotiation with the members of the informant association. It is stated that almost all the members signed the said agreement on dotted lines owing to the fact that they had already paid 35% of their project unit cost. It is further alleged that, save and except few members, other members have not received back copies of the agreements duly signed by the company.

2.14 On these facts and allegations, the informants have prayed to the Commission to initiate enquiry against DLF for, *inter alia*, abuse of dominant position; to direct the opposite parties to produce the relevant records involving the decision making process culminating into the grant of sanction/approval of the building plans/layout plans as well as the increase of building upto 12th floor; to pass order directing discontinuation of all the arbitrary clauses in the agreement forthwith; to pass appropriate orders restraining the opposite parties from arbitrary cancellation of allotment; to pass order providing exit option to an allottee with full refund of money paid alongwith interest @ 18% p.a. as well as compensation; to direct the agreement to stand modified to the extent and in the manner that clause 11 be abolished specifically or as may be found appropriate; to pass order imposing penalty on DLF; to pass order awarding the cost and expenses in the favour of the informant association and lastly to pass such other or further orders as the Commission may deem fit and proper in the facts and circumstances of the case.

3. The matter was considered by the Commission in its meeting held on 16.03.2011 and Commission decided to call the informant to present his case on 13.04.2011. The Counsel for the informant Shri Vikramjit Singh appeared before the Commission and made oral submissions. Further, the prayer of

the Counsel for submitting written submissions was allowed by the Commission and the matter was again listed on 10.05.2011. On that date the Counsel for the informant appeared and sought further time for filing written submissions. The Commission allowed the informant to file written submissions by 23.05.2011 and the matter was fixed on 25.05.2011. The informant did not file any written submissions and therefore, the Commission considered the matter on the basis of material available on record.

4. The Commission has carefully gone through the information and the documents filed therewith and has applied its mind to the facts and allegations set out in the information.

5. On close examination of the matter it is evident that the only allegation which has been made against DLF is that by abusing its dominant position in the relevant market DLF has imposed unfair conditions in the sale of commercial space in its project DLF Galleria located in the city of Kolkata. But the informant has miserably failed to furnish any facts or figures to show that the DLF enjoys dominant position in developing commercial space in the metropolis of Kolkata.

6. On the basis of the information available in public domain, it is seen that the city of Kolkata is, in recent times, seeing influx of many IT companies which has generated more demand of commercial office and retail space. Many prominent companies like Godrej, Infinity, Unitech, Sapooji Pallonji and

TCG Urban Infra Holding etc. are major developers of both office and retail space in Kolkata besides number of local developers who have been developing retail space for showrooms and other outlets. As per the information available in the public domain there are about 57 commercial areas in Kolkata.

7. According to Explanation to section 4 of the Act, the expression “dominant position” means a position of strength, enjoyed by an enterprise, in the relevant market, in India, which enables it to – operate independently of competitive forces prevailing in the relevant market; or affect its competitors or consumers or the relevant market in its favour.

8. As per the information available in public domain the DLF, being a new entrant in developing commercial space in Kolkata, is having only one property related to commercial retail space. In view of these factors the DLF cannot be treated as a dominant enterprise which can operate independently of competitive forces prevailing in the relevant market or affect the competitors or the relevant market in its favour.

9. As the factum of DLF enjoying a dominant position in developing commercial space in Kolkata has neither been established by the informant nor it has been substantiated from the information available in public domain no case of violation of section 4 of the Act is made out against DLF.

10. It is also observed that neither the information has made any allegations in respect of contravention of section 3 of the Act nor in the facts and circumstances of the case there appears to be any infringement of the provisions of that section.

11. In the light of the above discussion the Commission is of the view that no prima facie case is made out for making a reference to the Director General for conduction investigation into the matter and proceedings are liable to be closed.

12. The proceedings in the matter are hereby closed under section 26(2) of the Act.

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

Member (G)

Member (R)

Member (P)

Member (GG)

Member (AG)

Member (T)

Chairperson

