

Rajeev Nohwar v. Lodha Group (2017CompLR429(CCI))

Decision Date: 08.03.2017

Key Words: *abuse of dominance*

Issue: Whether the Agreement to Sell had provisions that amounted to abuse of dominant position?

Rule: Sec. 2(s) and (t) and Sec. 4 of the Competition Act, 2002

In the present case the Informant alleged that the OP, developers of residential housing, had contravened the provisions of Sec. 4 of the Act on grounds that the Agreement to Sell (Agreement) had clauses that were one-sided, abusive, illegal and unreasonable. This included clauses, which waived the rights of buyers over amenities, which were part of the sales brochures, which are also in violation the Maharashtra Ownership of Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1973 (MOF Act). Further there were no clauses for penalty against OP in case of delay of transfer, and the refund clause in the Agreement was stringent and unreasonable. The informant alleged that given the dominant position of the OP, this amounted to abuse of dominant position.

The Commission under Sec. 2(t) considered the relevant product market to be the “market for the provision of services relating to development and sale of residential flats” distinguishing the same from a mere plot of land in light of the additional amenities available. Further under Sec. 2(s) the relevant geographical area is said to be Pune City, despite the same being only on the outskirts of Pune. Since the market of Pune in development and sale of residential flats is extremely competitive with numerous players, OP was not held to have a dominant position. Thus the commission directed the closure of the case under Sec. 26(2) of the Act.