

In re: Amit Mittal v. DLF Ltd (Case No 73 of 2014)

Decision Date: 31.08.2018

Keywords: *abusive conduct; market dominance; period of assessment*

Issue: Whether there was a contravention of the provision of Sec. 4 of the Competition Act, 2002?

Rule: Sec. 26(6) of the Competition Act, 2002

The present information was filed under *Section 19(1)(a)* of the Competition Act, 2002 by Shri Amit Mittal (Informant) against DLF Limited (OP-1) and DLF New Gurgaon Home Developers Pvt. Ltd. (OP-2), alleging contravention of the provisions of *Section 4* of the Act.

The dispute resolves around the OP group's residential township called 'Regal Gardens'. The Informant applied for the allotment of an apartment in the said project. It was alleged by the informant that the Agreement was non-negotiable and had to be executed by the Informant within 30 days, failing which the booking amount was liable to be forfeited without any notice to the Informant. Apart from this, several clauses of the 'Agreement' were violative of provisions of *Section 4(2)(a)(i)* of the Act, being highly unfair and discriminatory towards the allottee and heavily biased towards OP-2.

Upon consideration of the facts and circumstances of the case, the Commission found the OP group to be dominant in the relevant market of "provision of services for development and sale of residential units in Gurgaon" and observed that prima facie the conduct of the OP group was abusive and in contravention of provisions of *Section 4* of the Act. Thus, the matter was referred to Director General (DG).

Upon consideration of the investigation report and the supplementary investigation report prepared by the DG as well as the reply filed by the OP, the Commission decided on the issue for determination in the instant case to be:

"Whether the OP group has contravened the provisions of Section 4 of the Act?" Section 4 of the Act proscribes abusive conduct by a dominant enterprise. Since the conduct of the OP group needs to be analysed under Section 4 of the Act, the existence of a position of dominance in

terms of the Act needs to be determined first as there can be no abuse of dominance in the absence of dominance. The position of dominance of an enterprise is, usually, with context to a relevant market within which such an enterprise is alleged to be abusing its position.

The Commission had considered the Investigation Report of the DG and observed that while defining the relevant market the DG had not confined itself to the property that was the subject matter of the case i.e. an apartment/ flat. Accordingly, the Commission had defined the relevant market as the market for the 'provision of services for development and sale of residential apartments/ flats in Gurgaon'. It was also observed that even if the factors provided under Section 19 (7) of the Act are considered, then in terms of physical characteristics and end use, price and consumer preferences, the market for "the provision of services for development and sale of residential apartments/ flats" can be considered to be the relevant product market in the present case.

The panel analysed data on the market share, size & resources of different players, and the land bank in credit of each player in the relevant market to determine the question of dominance.

After assessing the facts of the present case in terms of the factors in the Act, the Commission decided that the OP group did not have a dominant position in the relevant market in terms of *Section 4* of the Act.

The commission also considered certain precedents which had held there to be a dominant position in similar factual scenarios. These cases were distinguished by the commission on the basis of *period of assessment*.

The commission held that since the OP group did not appear to be in a dominant position in the relevant period, there remains no requirement to examine the allegations of abuse of dominance, since in the absence of dominance there can be no case of abuse of dominance in terms of *Section 4* of the Act.

Therefore, the Commission concluded that the contravention of the provisions of *Section 4* of the Act was not established in the instant matter. Hence, the case was ordered to be closed under *Section 26(6)* of the Act.