

Vijay Kapoor v. DLF Limited & Other (Case No 84 of 2014)

Decision date: 31.08.2018

Keywords: *Abuse of dominant position; construction of residential units; real estate*

Issue: Whether DLF Limited and DLF New Gurgaon Home Developers Pvt. Ltd. (DLF) enjoyed a dominant position?

Rule: Sec. 4 of the Competition Act, 2002

It was alleged that DLF imposed one-sided terms and conditions in the Agreement to Sell an apartment being developed by them in Gurgaon through abuse of their dominant position. Initially, the relevant market was identified as “*provision of services for development and sale of residential units in Gurgaon*”. However, later distinguishing residential units like villas from apartments and flats based on their utility, relevant market was revised to ‘*provision of services for development and sale of residential apartments/ flats in Gurgaon*’.

DG conducted an extensive empirical research to conclude on the dominant positions of DLF in the relevant market. The data pertaining to the relevant years for DLF and other players in the real estate market was analysed by DG. Some of the factors that were relied upon are market shares of DLF and other developers, size and resources of the enterprise, economic power of the enterprise including commercial advantage over other competitors, dependence of consumers on the enterprise, *etc.*

Commission relied upon the report of the DG and looked at the extensive research conducted in reaching a conclusion. It held that DLF lacked the ability to affect the: (i) competitors; (ii) consumers; or (iii) relevant market, in its favour as it did not enjoy a dominant position. The market in the concerned case is highly fragmented and competitive with the presence of strong players. This also means that consumers had the choice among different competitors which ensures substitutability and interchangeability.

Apart from empirical data, the crucial aspects in determining the dominant position of an entity in any case are restriction of the market to the relevant location (here, Gurgaon alone) and the relevant time period that the allegations pertain to (period of assessment). This is significant especially in light of the market dynamics including entrance of new players into the market.

It was held that DLF does not have the ability to operate independently in the market. Hence, Commission was of the view that the DLF does not have a dominant position in the relevant market in terms of Section 4 of the Act. Since there is lack of a dominant position primarily, the issue of abuse of this position loses significance.

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