

Sudarshan Kumar Kapur v. Delhi Development Authority (Case No. 78 of 2016)

Decision Date: 12.01.2017

Keywords: *abuse of dominant position; residential flats; prima facie case*

Issue: Whether the OP's conduct amounts to abuse of dominant position?

Rule: Sec. 4, Sec. 26(1) of the Competition Act, 2002

The informant (Sudarshan Kumar Kapur) alleged the DDA, a statutory authority engaged in the development and sale of land and residential units in Delhi, contravened Sec 4 by:

- a) asking for arbitrary price for the allotted plot which is 116 times higher than the price given in the Brochure. Further, the OP has charged at the prevailing 2014 rates instead of 2012 rates when the draw of lots were held;
- b) Even after full payment and completion of all requisite formalities by the Informant and his wife, the OP has not given possession of the developed plot till date;
- c) Clause 6 of the Brochure prescribes imposing penalty upon the buyer for delayed payment irrespective of any delay on the part of the OP; and
- d) Serving wrongful show cause notice to the Informant's wife.

Although the scheme was launched in 1981, draw of lots were held only in 2012 and allotment in 2014; hence the abuse occurred post enforcement of Sec 4 and accordingly the CCI has jurisdiction.

The informant alleged during a preliminary conference called by the CCI that no reply has been received from the OP to notice served by informant's wife, and not delivered possession for over 15 years now, resulting in abuse of dominant position.

Tasked with the preliminary step of determining whether the OP was an enterprise for application of Sec 4, the CCI interpreted Sec 2(h) to exclude any activities of the Government relating to its sovereign functions. Relying on various supreme court, and high court decisions

along with its own orders in the BCCI case, the CCI held that the OP fell within the definition of 'enterprise', for even though it was a statutory authority created under an Act the objective of which included, *inter alia*, to promote and secure the development of Delhi according to the plan and for those purposes had been invested with certain exclusive powers. However, the same were held to be neither sovereign or inalienable functions of the State.

The CCI noted that a residential plot is a distinct product which may not be substitutable or interchangeable with residential flats or any other residential units. While in case of purchase of a residential plot, buyers have a freedom to decide the floor plan, number of floors, structure and other specifications at their own discretion, in case of a residential flat the design and construction is formulated and completed by the builder without providing much opportunity to buyers. Further, it distinguished a plot from a flat by amenities available.

the Commission noted that the conditions of competition in the National Capital Territory of Delhi remains homogenous and distinct and can be easily distinguished, from the buyer's point of view, from the neighbouring areas such as NOIDA, Ghaziabad, Gurugram and Faridabad in terms of the difference in land prices, state laws and regulations, taxes, availability of public transportation system, *etc.* In addition, relying on consumer preferences as a result of differing urbanisation, infrastructure, health and educational facilities.

The relevant market was hence defined as "market for provision of services of development and sale of residential plots in the National Capital Territory of Delhi".

CCI held the OP to be in a dominant position for it was a statutory authority as a result of which no comparable alternatives were available to consumers in the relevant market, and the biggest real estate developer in Delhi with no other developer coming even close in size and structure of the OP.

- (i) The CCI noted that there had been an inordinate delay of 31 years, which too was resolved only after intervention of the Delhi High Court. Choosing to not delve into the merits of the case of the informant's wife, the Commission observed that given the dependence of buyers on the OP in the relevant market, they have little choice but to abide by the terms and conditions stipulated by the latter
- (ii) Although there was penalty imposed on allottees in case of delayed payment, there was no corresponding clause providing penalty on the OP for delay in allotment or

possession. Effectively, allottees are required to make payments, as and when demanded by the OP irrespective of the fact whether the promised action on the part of OP has been completed or not.

- (iii) Despite the allotment letter itself admitting that construction was incomplete, the OP made payment of 80% consideration mandatory, failing which allotment would stand cancelled. Such a condition implies substantial financial commitment on the part of the buyer without any corresponding commitment on the part of OP.
- (iv) the Commission observes that the OP had revised the price of the plots by 116 times, which was initially Rs. 200/- per sq. mt. in 1981 as per the Brochure to Rs. 23,252/- per sq. at time of allotment. Interest paid by OP was only two times of principal over the same period. There was no parity in rate of price escalation between parties.

The CCI further noted many instances of abuse in procedure and inordinate delay by the OP, reflecting its high handed approach and apathy with general public in exercise of position of dominance. Rendering the buyers in such helpless situation, causing such an exceptional delay, imposing one-sided conditions, OPs overall behaviour in dealing with the buyers are *all* evidence of unfair conduct of the OP *qua* its customers; and accordingly the CCI determined that the conduct of the OP *prima facie* amounts to abuse of dominant position by the OP in terms of the provisions of Section 4 of the Act.

Therefore, considering the information in totality, oral submissions made by the parties and all other material available on record, the Commission was of the view that there exists a *prima facie* case of contravention of the provisions of Section 4 of the Act by the OP and it is a fit case for investigation by the Director General (hereinafter the 'DG'). Accordingly, under the provisions of Section 26 (1) of the Act, the Commission directs the DG to cause an investigation into the matter and file an investigation report within a period of 60 days from date of receipt of this order.