

Ashutosh Bhardwaj v. DLF Limited (Case No. 01 of 2014 & 93 of 2015)

Decision Date: 04.01.2017

Keywords: *abuse of dominant position; real estate*

Issue: Whether the OPs engaged in abuse of dominant position by imposing discriminatory prices and other conditions on its consumers?

Rule: Sec. 4 of the Competition Act, 2002

The informant (Ashutosh Bhardwaj in 01 of 2014, and Lalit Babu & others 93 of 2015) filed under 19(1)(a) against DLF and others, alleging abuse of dominant position by imposing unfair/discriminatory prices/conditions in contravention of Sec 4.

The informants booked an apartment in a housing project of OP-1 whose primary objective is development and sale of residential, commercial and retail properties. It was alleged that the OP Group abused its dominant position by imposing highly arbitrary, unfair and unreasonable conditions, as shown through various non-negotiable clauses framed in favour of the OPs, as contravening 4(2)(a)(i) and 4(2)(d). Accordingly, directions were sought praying for modifications of clauses in the Agreement and compensation for delay in delivery of possession.

The relevant market u/s 2 (r) of the Act was defined by the DG as the market for “the provision of services for development/sale of residential units (apartments/flats/ independent floors/villas) under the licensed category of RGH and RPL in Gurgaon”.

- a. Relevant product market to be for “the provision of services for development/ sale of residential units(apartments/ flats/ independent floors/ villas) under the licensed category of RGH and RPL”.
- b. OPs plea of delineating entire NCR and not just Gurgaon as relevant geographic market was denied by DG on grounds the conditions prevailing in Gurgaon in terms of these attributes being different and distinguishable from

that of Delhi and Noida or other areas of NCR and hence in terms of the provisions of Section 19(6)(b) "local specification requirements" , Gurgaon was found to be different from other areas of NCR.

The CCI however de-emphasised the need to determine relevant market given that dominance would remain the same even in the alternative relevant market definition, and slightly widened the relevant market to “*provision of services for development/ sale of residential apartments in Gurgaon*”.

Relevant period/scope of investigation was restricted to a period three years from 2007-08 to 2009-10, being the period during which the project was launched and the apartment purchased by the informants.

Upon analysis of market share of OP group, the following factors were considered: land licensed for residential purposes, residential units launched, number of residential units sold, value of residential units sold and inventory; finding the OP group to be either foremost or second on all parameters, with assets being almost three times that of nearest competitor. The CCI noted that the OP group had an early lead in Gurgaon, having been there since 1946 giving it a distinct reputational and economies of scale first mover advantage due to which it could operate independently of other players in the relevant market.

Upon examination, some allegations, such as of mandatory payment of electricity and club facility charges, were found to be misconceived. The CCI found the following to be “asymmetric agreement heavily tilted in favour of the OPs, amongst others to establish violation of 4(2)(a)(i):

- (i) Mandatory purchase of parking space not warranted by statute.
- (ii) No need for notice or reminder by OP with no corresponding leeway for allottees.
- (iii) Time period for delivery, with ample scope to modify same on OP discretion.
- (iv) Procedure for taking possession, and lack of interest in case of failure by OP.
- (v) Levy of undetermined external/infrastructure development charge.

The CCI opined that given imposition of penalty in the similar Belaire’s case on the OP Group for acts committed in the same time period, and given the totality and peculiarity of the facts, no financial penalty under Sec 27 was required to be imposed.

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