

Competition News Alert

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Competition Commission of India imposes a penalty of ₹ 630 Crores on DLF Ltd. for abusing its dominant position

Introduction

Competition Commission of India (“**CCI**”) vide an order dated August 12, 2011 in *Belaire Owner's Association vs. DLF Limited and HUDA*. (Case no. 19/2010) has, inter alia, imposed a penalty at the rate of 7% of the average of the turnover for the last three years on DLF Ltd. (DLF). The penalty amounting to ₹ 630 crores (INR 6.3 billion) has been imposed for abuse of dominant position for imposing unfair conditions in the agreements made by DLF with flat buyers. The full text of the decision is available on the website of CCI www.cci.gov.in.

We present a brief synopsis on the developments leading to the final order by CCI, as under.

Allegations against DLF

It was alleged by the Informant (i.e. Belaire Owner's Association) that DLF has imposed “arbitrary, unfair and unreasonable conditions” on the apartment – allottees (of the housing complex 'Belaire' located in Gurgaon, being constructed by DLF), which amounted to abuse of its dominant position, in the so called relevant market of “high end” residential accommodation in Gurgaon. Some of the “unfair” conditions impugned by the Informant are as under:

- i. The number of floors which initially stood at 19 and which was the basis of the apartment allottees booking their respective apartments has been increased to 29 floors, thus resulting in the areas and facilities originally earmarked for the apartment allottees to be substantially compressed and also leading to delay in completion of the project.
- ii. Apartment Buyer's agreement was signed months after the booking of the apartment and by that time the allottees had already paid substantial amount, they hardly had any option but to adhere to the dictates of DLF.
- iii. The said agreement stipulates that DLF has the absolute right to reject and refuse to execute any Apartment Buyer's Agreement without assigning any reason, cause or explanation to the allottees.
- iv. The agreements were executed with the Apartment Buyers and construction started without an approved building plan



and further that no consent of the apartment allottees is at all required, if any change or condition is imposed, at the time of approval of the layout plan.

- v. The agreement does not contain the proportionate liability clause to fasten commensurate penalty/ damages on DLF for breach of its obligations.

Initial Order by CCI

CCI after considering the Information formed an opinion that a prima-facie case exists and directed the Director General ('DG') to investigate the matter. The Order of the CCI was challenged by DLF before the Competition Appellate Tribunal (COMPAT), inter-alia, raising the issues of jurisdiction. COMPAT vide order dated August 18, 2010 observed that the DLF can raise these issues before the CCI and disposed off the appeal without granting any relief, accordingly.

Interim order under Section 33 of the Act

The Informant also filed an application for interim order under Section 33 of the Competition Act, 2002 (“**the Act**”) on July 06, 2010. CCI vide an interim order dated September 20, 2010, restrained DLF from cancelling the allotment of the 'apartment allottees' and further restraining DLF from creating third party rights without the leave of the CCI.

Director General's (Investigation) Report

The DG after conducting an in-depth investigation of various allegations made in the information held that, DLF in exercise of its market power and dominance has imposed unfair conditions of sale on consumer in violation of Section 4(2)(a)(i) of the Act.

Issues involved and findings of CCI

CCI after considering the DG report and submissions made by the Respondents framed the following issues for consideration and held that:-

- **Issue I:** Do the provisions of Act apply to the facts and circumstances of the instant case?

CCI decision: Competition Act applies to all the existing agreements and covers those also which though entered into prior to the coming into force of section 4 of the Act

(May, 2009) but are sought to be acted upon now. In addition to that, in the present matter, the documents filed by the informant show that indeed in some cases the agreement was entered into between DLF and the allottees after the date of commencement of section 4 of the Act.

- **Issue 2:** What is the “relevant market”, in the context of section 4 read with section 2 (r), section 19 (5), section 19(6) and section 19(7) of the Act?

CCI decision: That, a small i.e. 5 % increase in the price of an apartment in Gurgaon would not make the person to shift his preference to Ghaziabad, Bahadurgarh or Faridabad on the peripheries of Delhi or even to Delhi in a vast majority of cases. Therefore, CCI held that the 'relevant market' is the market for services of developer / builder in respect of 'high-end' residential accommodation in Gurgaon.

- **Issue 3:** Is DLF Ltd. dominant in the above relevant market, in the context of section 4 read with section 19 (4) of the Competition Act?

CCI decision: Due to the sheer size and resources, market share and economic advantage of DLF over its competitors, DLF is not sufficiently constrained by other players operating on the market and has got a significant position of strength by virtue of which it can operate independently of competitive forces (restraints) and can also influence consumers in its favour in the relevant market in terms of explanation to Section 4 of the Act.

- **Issue 4:** In case DLF Ltd. is found to be dominant, is there any “abuse” of its dominant position in the relevant market by the above party?

CCI decision: After considering the various factors and replies from the parties concerned, CCI held that DLF Ltd. has contravened the section 4 (2) (a) (i) of the Act by directly or indirectly, imposing unfair or discriminatory condition in “sale of services”, as mentioned below :-

- Commencement of project without sanction/ approval of the projects
- Increase in number of floors mid-way
- Increasing of Floor Area Ratio (FAR) and Density Per Acre (DPA)
- Inordinate delay in completion and possession and forfeiture of amounts
- Clauses of the agreements are heavily biased in favour of DLF Ltd. and against the consumers.

Penalty imposed

CCI after considering the above alleged abuses by DLF Ltd. has imposed a penalty of a ₹ 630 Crores or INR 6.3 billion. (USD 132 Million) on DLF, which is calculated on the basis of 7 percent of the average of the turnover of the Group for the last three years. CCI has also directed DLF to 'cease and desist' from formulating and imposing such unfair conditions in its agreements with buyers in Gurgaon and to suitably modify unfair conditions imposed on its buyers within 3 months of the date of receipt of this order.

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