

COMPETITION APPELLATE TRIBUNAL  
NEW DELHI

CORAM

Hon'ble Shri Rajeev Kher  
Member

Hon'ble Ms. Anita Kapur  
Member

I.A. No.24/2017 - IN  
Appeal No.09/2017

(Under Section 53B of the Competition Act, 2002 against order dated 04.01.2017 passed by the Competition Commission of India in Case No.01/2014)

IN THE MATTER OF

1. DLF Home Developers Limited,  
1E, Jhandewalan Extension,  
Naaz Cinema Complex,  
New Delhi-110055.
  
2. DLF Limited,  
DLF Centre, Sansad Marg,  
New Delhi-110001. ...Appellants

Versus

1. The Competition Commission of India,  
7<sup>th</sup> Floor, The Hindustan Times House,  
18-20, Kasturba Gandhi Marg,  
New Delhi-110001.  
Through its Secretary
  
2. Mr. Ashutosh Bhardwaj,  
133/1, Inder Vihar,  
Street No.11, Rajender Nagar,  
Dehradun-248001, Uttarakhand, India. ...Respondents

I.A. No.25/2017 - IN  
Appeal No.10/2017

(Under Section 53B of the Competition Act, 2002 against order dated 04.01.2017 passed by the Competition Commission of India in Case No.93/2015)

IN THE MATTER OF

1. DLF Home Developers Limited,  
(Formerly DLF New Gurgaon Homes  
Home Developers Pvt. Limited)  
1E, Jhandewalan Extension,  
Naaz Cinema Complex,  
New Delhi-110055. ...Appellant

Versus

1. The Competition Commission of India,  
7<sup>th</sup> Floor, The Hindustan Times House,  
18-20, Kasturba Gandhi Marg,  
New Delhi-110001.  
Through its Secretary
2. Mr. Lalit Babu,  
3817, Jaydevnagar,  
Bhubaneswar,  
District Khurda-751002, Orissa, India. ...Respondents

Appearance: Shri Ramji Srinivasan, Senior Advocate assisted by Ms. Kanika Chaudhary Nayar, Ms. Nidhi Singh, Ms. Modhulika Bose and Shri Tushar Bhardwaj, Advocates for the Appellants in both cases.

ORDER

These appeals are directed against the order of the Competition Commission of India ('the Commission') passed in Case No.01/2014, Shri Ashutosh Bhardwaj vs. M/s. DLF Limited and others and Case No.93/2015, Shri Lalit Babu and others Vs. M/s. DLF New Gurgaon Homes Developers Pvt. Ltd.

2. The Respondents Shri Ashutosh Bhardwaj and Shri Lalit Babu and others filed information with the Commission alleging abuse of dominance on the part of the present Appellants under Section 4 of the Competition Act, 2002 ('the Act'). Very briefly, the facts relate to the sale of residential apartments by the Appellants to the Respondents and the alleged anti-competitive provisions of the Apartment Buyers' Agreement (ABA) executed between the parties. According to the allegations, the Appellants enjoy a dominant position in the relevant market and have abused their dominant position by incorporating anti-competitive conditions in the ABA. The Commission ordered investigation by the Director General ('the DG') into the allegations and on the basis of DG's report determined the relevant product and geographical market. They also found Appellants' dominant in the relevant market and determined that the terms of the ABA were abusive in nature. We quote from paragraphs 10 to 24 from the appeal memo to briefly describe the facts and chronology of events in these cases in order to explain that several matters relating to the same Appellants have been addressed by the Commission and this Tribunal earlier and are pending in the Supreme Court for final adjudication :-

"10. The Appellant No.1 planned and launched construction of a multi-storeyed residential apartments building complex known as 'New Town Heights' (Project) in Sectors 86, 90 and 91 Gurgaon, (Haryana) in the year 2008. The

Applications for booking apartments in the aforesaid building complex were received from February, 2008 onwards from various allottees together with the booking amounts. The said booking application is referred to in Annexure-A5.

11. Upon receipt of the booking application together with the booking amounts, receipts of payments of the booking amounts were issued to the respective allottees from time to time. The allotment letters were sent to the respective allottees along with the schedule of payment.
12. An Apartment Buyers Agreement (hereinafter referred to as the 'ABA/ Agreement') was entered into with the allottees. The ABA was the agreement to sell/ purchase the apartment, and the allottees were required to make payments of instalments under the schedule of payment. The ABA is referred to in Annexure-A5.
13. The ABA sets out briefly the payments schedule and cost structure (Clause 3); earnest money (Clause 4); mode of payment in time (Clause 5); alterations and modifications to the construction (Clause 10); schedule for possession (Clause 11);

delay due to reasons beyond the control of the Appellant No.1 and remedies to the allottee (Clause 14); events of defaults and consequences (Clause 60) and maintenance of the buildings/ complex/ apartment (Clause 19).

14. By way of background, it is pertinent to submit that Respondent No.1 has previously considered the ABA and Appellant No.1's conduct in the Project, in Case Nos.13 and 21 of 2010, and Case No.55 of 2012. It is submitted Respondent No.1 had clubbed the investigation in Case No.13 of 2010 and Case No.21 of 2010. The Director General (DG) then submitted its investigation Report dated 18 October 2010 (the First DG Report) where DHDL was found to have contravened Section 4 of the Competition Act, 2002. The relevant market defined by the DG in the First DG Report is "*high end residential units which are developed and sold to prospective buyers through provision of services in Gurgaon*". A copy of the First DG Report is attached and annexed herewith as Annexure-A3 (without annexures).
15. However, Respondent No.1, through its order dated 07 December 2011 expressed its dissatisfaction with the relevant market defined in the First DG

Report and directed the DG to reinvestigate the matter. Pursuant to this order, the DG submitted its second Investigation Report dated 25 October 2012 (the Second DG Report) redefining the relevant market being “*services provided by the developers/builders in respect of residential building apartments ranging between Rs.40-60 Lakhs to consumers in Gurgaon*”. A copy of the Second DG Report is attached and annexed herewith as Annexure-A4 (without annexures).

16. Thereafter, Respondent No.2 filed information dated 03 January 2014 under section 19(1) (a) of the Act against Appellant No.1, 2 and 3 for alleged violations of the provisions of the Act. A copy of the said Information filed by Respondent No.2 is attached and annexed herewith as Annexure-A5. The DG completed its investigation in Case No.55 of 2012 and submitted another Investigation Report dated 28 January 2013 (the Third DG Report) in the said matter. The relevant market defined by the DG in the Third DG Report is “*provision of services for development of residential apartment in Gurgaon*”. A copy of the Third DG Report is attached and annexed herewith as Annexure-A6 (without

annexures). It is pertinent to note that the investigation in Case No.55 of 2012 was not clubbed with investigation in Case Nos.13 and 21 of 2010, even though Respondent No.1 heard all three matters in conjunction, on account of the fact that the Information's filed in all three matters pertained to the Project, and raised similar allegations. It is thus submitted that there already exist three DG Reports in relation to the Project.

17. Moreover, on 27 February 2014 Respondent No.1 passed a *Prima facie* order under Section 26(1) of the Act wherein the DG was directed to cause another investigation into the Project. A copy of the order dated 27 February 2014 under Section 26(1) of the Act is attached and annexed herewith as Annexure-A7.
18. In the interim period, the Hon'ble Tribunal passed the Order dated 19 May 2014 (Belaire Order) in Appeal No.20 of 2011 *DLF Limited v. Competition Commission of India*, which relates to the projects Belaire, Park Place and Magnolia. Through the order dated 19 May 2014, the Hon'ble Tribunal, while confirming the order passed by Respondent No.1, held that the agreements entered prior to the

enforcement of the Act, i.e., prior to 20 May 2009, cannot be examined by Respondent No.1 and that Respondent No.1 also does not have the power to modify agreements when the alleged contravention relates to Section 4 of the Act. A copy of the Belaire Order is attached and annexed herewith as Annexure-A8.

19. Subsequently, Respondent No.1 after considering the three DG Reports issued in Case Nos.13 and 21 of 2010 and Case No.55 of 2012, passed an Order under Section 27 of the Act on 12 May 2015 (Order dated 12 May 2015), finding Appellant No.1 to have contravened Section 4 of the Act. A copy of the said Order is attached and annexed herewith as Annexure-A9.
20. Subsequently, the Appellant No.1 preferred an appeal on 20 July 2015, bearing title *DHDL v. CCI & Ors.*, Appeal No.106 of 2015 (hereinafter referred to as “the Appeal”) against Order dated 12 May 2015 passed by Respondent No.1 under Section 53 B of the Act before the Hon’ble Tribunal, challenging the Order dated 12 May 2015 for its flawed reasoning, inaccuracies, and failure to adequately assess the present case.



21. Thereafter the Appeal was listed for consideration before the Hon'ble Tribunal on 30 November 2015, during which the Hon'ble Tribunal dismissed the Appeal and passed an Order, stating at paragraph 4 therein, that *"Since the issues raised by the appellant have already been decided by the Tribunal and the order passed by the Tribunal is subject matter of challenge before the Supreme Court in the appeals filed by the appellant, the Commission and the Apartment Owners' Association we do not consider it proper to entertain the appeals and the same are dismissed. It is needless to say that if the appellant challenges the impugned order before the Supreme Court then it shall be free to raise all the grounds taken in the memo of appeal."*
22. Subsequently, the Appellant No.1 preferred appeals, bearing title *DLF Home Developers Limited v. CCI & Ors.*, Civil Appeal Nos.2523 of 2016 and 2532 of 2016 against the Order passed by the Hon'ble Tribunal in Appeal Nos.106 of 2016 and 107 of 2016 under Section 53 T of the Act before the Hon'ble Supreme Court of India challenging the aforementioned Order dated 30

November 2015. The said Appeals came up for hearing before the Hon'ble Supreme Court of India on 22 April 2016 wherein notice was issued to the opposite parties and matter was tagged along with the Civil Appeal No.6328 of 2014 and other connected appeals, which are the Appeal pending before the Supreme Court of India pursuant to the order passed by the Hon'ble Tribunal in the Belaire Matter.

23. Meanwhile, the DG completed its investigation in the present matter, and submitted the Fourth DG Report to Respondent No.1 for its consideration. A copy of the said Fourth DG Report along with annexures is attached and annexed herewith as Annexure-A10.
24. In the Fourth DG Report, the relevant market was delineated as the market for the provision of services for development/ sale of residential units (apartments/ flats/ independent floors/ villas) under the licensed category of Residential Group Housing (RGH) and Residential Plotted Colony (RPL) in the Gurgaon".

3. On the basis of the investigations carried out by the DG, the Commission determined the relevant product market. Paragraph 43 of the impugned order encapsulates the extremely thin difference between the present couple of cases with those which came before the Tribunal in the earlier rounds of litigation in the context of the same scheme though pertaining to different sectors in Gurgaon. In paragraphs 49 to 54, the Commission has examined and determined the relevant product and geographical market and we quote from these paragraphs below :

“49. Drawing inference from the above, the Commission hereby reiterates that when the dominance of an enterprise remains unchanged in a market even with an alternative market definition, technicality of the product market need not be dwelled further. Therefore, the argument put forth by the OPs that DG has given inconsistent market definition, has no force. At the same time, the Commission sees no reason to deviate from the product market definition taken in earlier cases dealing with similar the issues and project i.e., Case no. 13 and 21 of 2010 and 55 of 2012 where the relevant product market was defined as the market for the *‘provision of services for development/ sale of residential apartments’*.”

50. With regard to the relevant geographic market, the Commission agrees with the DG's view that Gurgaon would be the geographic region for the purpose of the present cases. Reference is made to the observation made by the Commission in Case Nos. 13 and 21 of 2010 and Case No. 55 of 2012 where *Belaire's case* was yet again referred to define the relevant geographic market. The relevant extract is provided herein below:

*'6.23....The 'geographic region of Gurgaon' has gained relevance owing to its unique circumstances and proximity to Delhi, Airports, golf courses, world class malls. During the years it has evolved as a distinct brand image as a destination for upwardly mobile families. As it has been reasoned out in the order passed by this Commission in the Belaire case, a person working in NOIDA is unlikely to purchase an apartment in Gurgaon, as he would never intend to settle there. Thereafter, the Commission in that order distinguished between buyers looking for residential property out of their hard earned money or even by taking housing*

*loans and those buyers who merely buy such residential apartments for investment purposes; stating clearly that the Commission was not looking at the concerns of speculators, but of genuine buyers. It was therefore, observed that a small 5% increase in the price of an apartment in Gurgaon, would not make a person shift his preference to Ghaziabad, Bahadurgarh or Faridabad or the peripheries of Delhi or even Delhi in a vast majority of cases. The COMPAT's order, dated 19.05.2014 passed while disposing of the appeals filed against the Commission's order in the Belaide case, upheld the Commission's finding on the relevant geographic market to be 'geographic region of Gurgaon'.....'*

51. Based on the above, the Commission is of the view that geographic region of 'Gurgaon' is the appropriate relevant geographic market and not the entire NCR as contended by the OPs.
52. In view of the foregoing, the Commission delineates the relevant market as the market for 'provision of

*services for development/ sale of residential apartments in Gurgaon'.*

53. On the dominance of OP Group, there is no doubt that the strength which the OP Group possesses in residential real estate segment in the geographic region of Gurgaon is incomparable. In the order dated 12.05.2015 in Case Nos. 13 and 21 of 2010 and Case No. 55 of 2012, the Commission has dwelled into details on the aspect of dominance of the OP Group and has thoroughly assessed the DG's findings. Thereafter, it was finally concluded that the OP Group held a dominant position in the relevant market. The assessment done by the Commission in the previous orders will also apply in the present matters since the issues, the relevant period and the OPs involved are the same. Therefore, it is opined that the OP Group holds a dominant position in the market for the *'provision of services for development/sale of residential apartments in Gurgaon'.*
54. With regard to the issue of abuse of dominance, the Commission notes that the same has already been dealt with by the Commission in its previous orders. It was held that those terms and conditions imposed

through the Agreement were abusive being unfair within the meaning of Section 4(2)(a)(i) of the Act. For the sake of brevity, the analysis on the alleged abusive terms is not provided herein. Considering the assessment done in the previous cases including Belaire's case, the Commission is of the view that the terms and conditions imposed on the allottees in the instant matters as analyzed by the DG in detail are abusive in nature and the OP Group has contravened Section 4(2)(a)(i) of the Act."

4. We have heard the learned Senior Counsel Shri Ramji Srinivasan at the admission stage. From the facts narrated in the preceding paragraphs and submissions made by Shri Srinivasan, it is clearly brought out that :
  - (i) Similar issues have been raised in earlier cases, which came before us - specifically mentioned in the above paragraphs where the Apartment Buyers' Agreement executed by the Appellants herein with their customers were examined in relation to some Schemes including the present Scheme viz : 'New Town Heights' developed in Sector 90 and 91 of Gurgaon. The only difference is that the present cases relate to the Schemes developed in Sector 86 of Gurgaon.

(ii) A string of cases dwelling into the allegations of dominance and its abuse by the Appellant companies were examined and decided by this Tribunal and are now subject of second appeals in the Supreme Court. In our earlier order in Appeal Nos.106 of 2015 and 107 of 2015, we had listed out the pending litigation in the Supreme Court in respect to the same set of Appellants. For the sake of convenience, we quote from paragraph 3 of our earlier order :

“3. During the course of hearing, Shri Srinivasan fairly admitted that appeal filed against order of the Commission in Belaires Owners’ Association vs. DLF Limited, HUDA and other was challenged before Tribunal and the verdict of the Tribunal is now subject matter of challenge before the Supreme Court in the following appeals :

1. DLF Ltd. v. Competition Commission of India (Belaire) C.A. No.6328 of 2014
2. DLF Ltd. v. Competition Commission of India (Park Place) C.A. No.6481 of 2014
3. DLF Ltd. v. Competition Commission of India (Magnolia) C.A. No.6487 of 2014
4. Competition Commission of India v. DLF Ltd. & Others C.A. No.8014 of 2014
5. Belaire Owners Association v. DLF Ltd. & Others C.A. No.11108 of 2014



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| 6. | DLF Park Place Residents Welfare Association v. DLF Ltd. & Others | C.A. No.11109 of 2014 |
| 7. | Magnolias Flat Owners Association v.. DLF Ltd. & others           | C.A. No.9868 of 2014  |
| 8. | PushkarDutt& Others v. DLF Ltd. & others                          | C.A. No.10540 of 2014 |
| 9. | Mili Marketing Pvt. Ltd. v. DLF Ltd. & Others                     | C.A. No.49 of 2015”   |

5. During the course of his arguments Shri Srinivasan gave us a list of appeals pending before the Supreme Court, which includes the above cases as well as the two cases arising out of our orders in Appeal Nos.106 of 2015 and 107 of 2015.

6. It can be fairly summarized that issues relating to alleged abuse of dominance in the Apartment Buyers' Agreements executed between the Appellant companies and their customers have been examined in details by this Tribunal in above listed cases and are pending for final determination before the Supreme Court. No purpose will be served by this Tribunal going into these appeals yet again, as the matters under dispute are receiving the attention of the Supreme Court. Shri Srinivasan fairly stated that in view of a long list of appeals on similar facts pending before the Supreme Court, it may only be logical for this Tribunal to let these cases be considered in view of the orders made by this Tribunal in earlier cases, by the Supreme Court. In these circumstances, we do not consider it proper to entertain these appeals and the same are dismissed. It is needless

to say that if the appellants challenge the impugned order before the Supreme Court then they shall be free to raise all the grounds taken in the memo of appeal. As a consequence, appeals are dismissed and so are the interlocutory applications in both these cases.

(Rajeev Kher)  
Member

(Anita Kapur)  
Member

10<sup>th</sup> April, 2017