

COMPETITION COMMISSION OF INDIA

Case No. 07 of 2023

In Re:

Mr. Jitendra Bathla
H. No. 133-134, 1st floor, Pocket 2,
Sector-24 Rohini
New Delhi-110085.

Informant

And

M/s DLF Gayatri Developers

- 1. DLF Gateway Towers,**
1st Floor, DLF City, Phase-III,
Gurgaon, Haryana - 122 002.
- 2. 6-3-1090, Ground Floor, C-Block,**
TSR Towers, Rajbhavan Road,
Somajiguda, Hyderabad -500082.

Opposite Party

CORAM

Ms. Ravneet Kaur
Chairperson

Ms. Sangeeta Verma
Member

Mr. Bhagwant Singh Bishnoi
Member

Order under Section 26(2) of the Competition Act, 2002

1. The present information has been filed by Mr. Jitendra Bathla (the “**Informant**”) under Section 19(1) (a) of the Competition Act, 2002 (the “**Act**”) against M/s DLF Gayatri

Developers (“**the Opposite Party**”/“**OP**”) located at (a) DLF Gateway Towers, 1st Floor, DLF City, Phase-III, Gurgaon, Haryana-122 002, and (b) 6-3-1090, Ground Floor, C-Block, TSR Towers, Rajbhavan Road, Somajiguda, Hyderabad-500082, alleging contravention of provisions of Section 4 of the Act.

2. In 2012, the Informant is stated to have booked a residential plot measuring 222.97 sq. meter (approximately 267 sq. yards) in DLF Garden City Project developed by the OP in Nandigama Village, Kottur Mandal, District Mahbubnagar, Telangana (erstwhile Andhra Pradesh). The Informant was given assurance by the OP of handing over possession of the said plot in two years.
3. DLF Gayatri Developers is stated to be a joint venture between DLF India Ltd. and Gayatri Infra Private Limited. DLF India Ltd. (“**DLF**”) is a company engaged in the real estate sector, with a presence of more than sixty years. Gayatri Infra Private limited (“**GIPL**”) is also an infrastructure company, with projects stated to be all over the country.
4. As per the Information, the instant project is stated to have been given wide publicity on account of two big real-estate developers / builders coming together to develop a high-end residential / commercial project. It is averred that the project was promised to be delivered in year 2014 but was delayed, and an offer of possession of the plot was made in the year 2019. In this regard, the Informant received relevant documents, including a copy of the club agreement (CA) through email dated 09.05.2019 received from the OP.
5. The allegations in the Information relate to contravention of the Act with regard to certain clauses of the CA. According to the Informant, said clauses in the CA are unfair and discriminatory in nature and bind the plot owners of the DLF Garden City project, including the Informant. The alleged clauses of the CA are as under:

- a) absolute discretion of the club management to grant or curtail or terminate club membership (clause 7.1)
 - b) exorbitant club charges, which included club membership fees (for five years), annual subscription charges, and security deposit (clause 7.2)
 - c) absolute right of the club management to hire club facilities to non-members and to restrict members from using club facilities or hired facilities (clause 14)
 - d) absolute right to introduce multi-club membership at separate stipulated terms and conditions, additional security, membership/subscription charges (clause 18) and
 - e) confirmation from the applicant that he/she has no objection to arbitration proceedings to be conducted at OPs' premises by its employee(s), in English language only (clause 19).
6. As per the Informant, the OP has been advertising the club as a showcase to market the project at the cost of plot owners.
7. Apart from the above, the Informant is stated to have filed a consumer complaint in the district consumer forum in Hyderabad on 25.11.2020 regarding non-payment of compensation for delayed possession and other arbitrary charges which, according to him, was decided in his favour on 11.11.2022. As such, the Informant has stated that there is no case of *res-judicata* in the matter as relief sought under the instant matter was not raised before the district consumer forum.
8. Based on the afore stated facts and allegations, the Informant has alleged that the OP has abused its dominant position by imposing certain one-sided, unfair, and discriminatory conditions in the CA in contravention of provisions of Section 4 of the Act.
9. Based on the above averments and allegations, the present information has been filed by the Informant against the OP and has prayed that the Commission may:

- (i) Direct the OP to remove/amend the unfair and discriminatory conditions contained in various clauses of CA;
- (ii) Revoke the club agreements signed earlier by the other owners who have completed the registration of the project and issue them new club agreements as per the amendments, as may be directed by the Commission;
- (iii) Impose penalty on the OP for imposing unfair and discriminatory conditions using its dominant position;
- (iv) Issue direction to the OP to include the members in the decision/rule-making authority; and
- (v) Pass any other order as it may deem fit and proper in the circumstances of the case.

10. The Commission has examined the Information and material available on record, and based on the allegations levelled in the Information, it is observed that the Informant is primarily aggrieved by the fact that the OP has imposed unfair terms and conditions in the CA. It is observed that the allegations in the Information relate to the violation of the provisions of Section 4 of the Act by the OP.

11. For examining the allegations under the provisions of Section 4 of the Act, it is necessary to first determine the relevant market. Thereafter, it is required to be assessed whether the OP enjoys a position of strength required to operate independently of the market forces in such relevant market. Only when such a position is established is it necessary to assess whether the impugned conduct amounts to abuse of dominance.

12. The delineation of relevant market is *sine qua non* for examining the allegedly abusive conduct of the OP. The delineation of the relevant market involves determining the relevant product and relevant geographic market in terms of Section 2(t) and 2(s) of the Act, respectively. The allegations of the Informant in the present matter relate to a residential plot in DLF Garden City Project, a project of OP located in Kottur Mandal,

Mahabubnagar District, Telangana. Thus, the relevant product in question is a residential plot. The Commission notes that the requirement, scope, and prospect of a residential plot are different from that of a residential apartment. Residential plots form a separate relevant market since the motive of buying and factors considered for buying a residential plot by consumers are different from that of a residential apartment/flat. In case of a residential plot, unlike a residential apartment, where the real-estate developer completes the construction of the apartment before possession is given to the allottee, the buyer of a plot has the freedom to decide the floor plan, the structure, and other specificities subject to applicable regulations. Thus, buyers wishing to purchase a residential plot may not prefer to substitute it with a residential apartment and vice versa. Accordingly, keeping in view the substitutability and characteristics of services, their prices, and intended use, the relevant product market in this case may be considered as the market for “*the provision of services for development and sale of residential plots*”.

13. With respect to the relevant geographic market, the Commission notes that the Informant has bought a residential plot in Nandigama village, Kottur Mandal, in District Mahabubnagar. Mahabubnagar was part of the state of Andhra Pradesh at the time of booking (*i.e.*, in year 2012) the residential plot and is now one of the districts of the state of Telangana. The project is located near NH 44, a major North-South highway, and is about 50 kms from Hyderabad. The potential plot buyers/consumers looking for a residential plot in a particular area may not prefer other neighbouring areas because of factors such as level of development, price, distance, etc. Further, consumers may not switch to other areas with a slight increase in the price of the plots because of factors such as consumer preferences, urban infrastructure facilities, transport services, etc. The Commission notes that the geographic region of Mahabubnagar exhibits distinctly homogenous market conditions, distinguishable from conditions prevailing in adjacent/neighbouring areas. Therefore, the relevant geographic market *prima facie* can be considered as “*Mahabubnagar district in State of Telangana*”.

14. Based on the relevant product market and the relevant geographic market defined *supra*, the relevant market in the present case may be defined as the market for “*provision of services for development and sale of residential plots in Mahabubnagar district in the State of Telangana*”.

15. Pursuant to the delineation of the relevant market, the next step is to assess whether the OP holds a dominant position in the relevant market delineated *supra*. The underlying principle in the assessment of the dominant position of an enterprise is linked to the market power of the enterprise in question, which allows an enterprise to act independently of competitive constraints. Such independence affords an enterprise the capacity to affect the relevant market in its favour and to the economic detriment of its competitors and consumers. At the outset, the Informant has not disclosed any kind of material to demonstrate that the OP is dominant in the relevant market. In the present case, based on the information available in the public domain currently, it is observed that residential plots in townships/projects are available in Mahbubnagar District of the State of Telangana. Further, there are a number of RERA-approved projects of real-estate developers such as Girdhari Constructions, Ashoka Ventures, Siri Sampada Homes, Sri Rama Bhoomi Developers, Vardhan Developers, *etc.*, having residential plots available for sale in various areas/localities in district Mahbubnagar of comparable size and similar amenities. Several of these real-estate developers have had presence in the sector for many years. Accordingly, the Commission is of the *prima facie* view that the OP does not enjoy a dominant position in the relevant market defined *supra*.

16. Since the OP is not in a dominant position in the relevant market, the question of abuse of a dominant position by it within the meaning of the provisions of Section 4 of the Act does not arise. Accordingly, no case of abuse of dominance in terms of Section 4 of the Act is made out against the OP in the present matter. As such, the Information is ordered to be closed forthwith in terms of the provisions contained in Section 26(2) of the Act.

17. It is, however, made clear that nothing stated in the present order shall preclude the Informant to approach appropriate forum and from taking/availing any other remedy(s) available to him in accordance with law.
18. The Secretary is directed to communicate to the Informant accordingly.

**Sd/-
(Ravneet Kaur)
Chairperson**



**Sd/-
(Sangeeta Verma)
Member**

LEGALERA
BY THE PEOPLE. FOR THE PEOPLE. OF THE PEOPLE

**New Delhi
Date: 13.07.2023**

**Sd/-
(Bhagwant Singh Bishnoi)
Member**