

CCI ORDER LIKELY TO IMPACT REALTY SECTOR

The Competition Commission of India (CCI) imposed a penalty of Rs 630Crore on real estate major DLF which amounts to 7 per cent of the company's average annual turnover of last three years as DLF Limited has been proven guilty of violating sections 3 (1) and 4(2) of the Competition Act, 2002.

A company is said to be violating Section 3(1) when the agreements executed by the seller create an adverse effect on competition in India and Section 4(2) (a) of the Competition Act when it directly or indirectly imposes unfair or discriminatory conditions or prices with respect to the purchase or sale of goods or services.

The CCI had initiated a probe last year on the basis of complaints by some people who booked flats in DLF projects.

Brief Facts:

In the year 2006 DLF announced a Group Housing Project under the name "Belaire" consisting of 5 multi-storied residential buildings having 19 floors consisting 368 apartments in total and the construction was to be completed within a period of 36 months from the date of announcement of the Project.

Subsequently DLF increased the height of buildings to 29 Floor and increased the number of flats to 564, thereby compressing the common area and facilities initially offered to the buyers. This increase also delayed the project.

The **Informant** is the "Belaire Owners Association", which was formed by the apartment allottees of the project

Issues Raised by the Informants against DLF:

1. DLF has imposed highly arbitrary, unfair and unreasonable conditions
2. DLF had constructed 29 floors instead of 19 floors as announced earlier resulting in compression of the area and facilities originally earmarked for the apartment allottees and abnormally delay in the project due to which buyers had to bear huge financial losses
3. The Apartment Buyer's Agreements were signed months after the booking of the apartment and by that time the allottees had already paid substantial amount
4. The clauses were arbitrary and one sided which further led the apartment allottee to suffer
5. DLF had made false promises regarding the basic amenities and project completion

On detailed investigation by the Director General (Investigations) it was found that DLF abused its powers due to its dominant position in the real estate sector. The following were considered by CCI to be objectionable:

- 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
- Forfeiture of amounts
- Clauses of agreement like 1.5, 1.6, 1.7 (iii), 1.7 (viii), 1.9, 1.11 (a), 1.14, 4, 11.3, 11.4, 20, 22, 23, 35 and Representations B, C and E, are heavily biased in favour of DLF Ltd. and against the consumers

Decision of the CCI:

In view of the above the CCI has directed the DLF as under:

- i. to cease and desist from formulating and imposing such unfair conditions in its agreements with buyers in Gurgaon
- ii. suitably modify unfair conditions imposed on its buyers within 3 months of the date of receipt of the order

The Commission justified the imposition of hefty penalty as DLF abused its position and imposed unfair conditions with the sole motive of undue economic gains and business profits so the penalty is to be commensurate with the severity of the violation and a deterrent so that such unfair practices are not repeated.

The CCI also found certain other practices listed below apparently followed in the industry to be objectionable and detriment to consumer interests:

- i. They issue advertisements for launching projects without the land in question being actually purchased, registered in their name and possession taken and without taking prior approval of competent authorities
- ii. They do not specify the total area of the plot/flat/house indicating clearly the carpet area and utility area
- iii. They do not specify the date of delivery and consequential remedies available to the consumer in case of delay
- iv. The amount collected from the allottees against a particular project is not deposited in a designated escrow account and utilized only for the construction of the concerned building
- v. The information relating to the progress of works and status of account of each allottee is not made available to buyers in a transparent manner
- vi. They build in hidden costs other than the initial set price
- vii. They do not post all the relevant information on internet and make them available in public domain. There is no transparent and participatory mechanism put in place to deal with escalation in price, if any
- viii. There is often inordinate delay in execution of the project and if the project is delayed without previously agreed valid reasons, there is no provision that would entail pre-determined amount of penalties on total project to be paid to the consumers
- ix. There is no fair, participatory and transparent mechanism to tackle any substantive and major changes in the project mid-way, before taking approval of the authorities for the revised scheme and commencing construction thereon. Changes in FAR or density per acre, exclusion of some common facilities or substantive changes in 232 design and layout are not included in the category of substantive or major changes. The description of substantive or major changes as well as the mechanism for decision making is not clearly given in the Buyers' Agreement.

The CCI also said the Centre as well as State Governments should come out with regulatory framework for the realty sector to protect consumers from unfair trade practices.

The imposition of heavy penalty by CCI and its Order is likely to have serious consequences on the real estate industry and prove to be a catalyst for revision of all one-sided clauses in the Builder-Buyer Agreement and may damp down the current boom in the sector.



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