

**CCI AMENDS THE APARTMENT BUYERS' AGREEMENT PERTAINING TO THE PROJECT
UNDERTAKEN BY DLF LIMITED**

The Competition Commission of India ("**Commission**") in the matter of Belaire Owners' Association vs. DLF Limited and Ors., passed an order under Section 27 of the Competition Act, 2002 ("**Act**") on January 3, 2013, modifying the Apartment Buyers' Agreement ("**ABA**") entered into between DLF Limited ("**DLF**") and the apartment allottees of the housing complex "the Belaire" in DLF City, Gurgaon.

Belaire Owners' Association ("**Association**") approached the Commission under Section 19(1) (a) of the Act (which provides for inquiry by the Commission into certain agreements and dominant position in case of receipt of any complaint) against DLF, alleging that by abusing its dominant position in the market, DLF had imposed highly arbitrary, unfair and unreasonable conditions on the allottees which had serious adverse effects on the rights of the allottees. The Commission, through its order dated August 12, 2011 had held that DLF was a dominant enterprise which had violated the provisions of Section 4 of the Act (which provides for prohibition of abuse of dominant position) by entering into one-sided ABA with the apartment allottees which was unfair to the allottees. Accordingly, the Commission imposed a fine of Rs. 630 crores on DLF. Against this decision, DLF appealed before Competition Appellate Tribunal ("**COMPAT**") which vide its order dated March 29, 2012, remitted the matter to the Commission and directed it to pass an order in accordance with the Act specifying the extent and manner in which the terms and conditions of the ABA need to be modified.

The Commission through its order dated January 3, 2013 for the first time came out with the modifications in the ABA so that the unfair conditions present in the said one sided agreement could be removed and while doing so the Commission has amended the ABA almost in its entirety.

The Commission in the said order firstly considered the relevant provisions of the laws applicable to the development of group housing projects in Haryana, particularly the mandatory requirements which must be followed by every developer. The Commission has further clarified that any such agreement would have to comply with the applicable laws and regulations of the respective state (in the present case, applicable laws in Haryana) and no agreement, whether framed by the Commission or any other party, could supersede any such laws. The Commission further held that the rights vested in the allottees cannot be taken away by a builder unilaterally. The Commission provided that the recitals of the ABA should specify the title of the

developer pertaining to project plan, its obligation for obtaining necessary licences from relevant authorities and representations of parties to abide by applicable laws.

It must be noted that the Commission has disallowed any alteration or additional construction beyond the approved building plan and held that the builder would no longer have sole ownership of open spaces within the residential project area. The said order also provides that the management of common facilities would be done by the apartment owners through a joint ownership process as agreed upon by the apartment owners. Further, the Commission has modified “*time is essence*” clause of the ABA and held that the same should be mutually applicable to both parties. The Commission has held that DLF shall abide by the time schedule for completing the construction, creating the facilities and handing over the apartment to the allottees and similarly, the allottees shall make timely payment of the instalment and other dues. Further, the Commission has made significant changes to the clause pertaining to the “*termination of contract*” in the ABA as the Commission found them heavily biased and without any exit option for allottees in case of non-delivery of possession of the apartment by DLF, even without any fault of allottees.

The clause with respect to the transfer of ownership has been directed to be drafted in accordance with the Haryana Apartment Ownership Act, 1983 (“**Act of 1983**”) and the Commission has held that the said clause should not be unfair. The said order also provides that the clause concerning maintenance should recognize the right of the allottees to manage the common services of the complex through residents’ welfare association, as envisaged in the Act of 1983.

It is pertinent to note that the changes made by the Commission will be subject to review by the COMPAT as the appeal was not disposed off in its entirety and the case was remitted back with directions to specify the extent and grounds for modifications to be done in the ABA.

IndusLaw Quick View: *This order is likely to be relied upon by apartment purchasers and associations across the country to negotiate with builders and to seek changes in the standard formats used. This order is also likely to be relied on in consumer court proceedings to persuade the courts not to give effect to one-sided clauses. Viewed from any angle this order is a significant development which will have an impact on builder-consumer relationship and disputes arising from it.*



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