

# What forum do you take your complaint to?

A consumer court is a better redressal forum for home buyers instead of CCI, which handles cases of builders abusing their dominant position

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Recently, there have been cases where flat owners have filed complaints against builders/developers with the Competition Commission of India (CCI), alleging unjust and one-sided provisions of builder-buyer agreements they have executed with builders. CCI, however, only has the authority to look into complaints of misuse of dominant position by a seller in the market.

The present case arose after allegations by complainants regarding misuse of dominant position by a developer (Jaypee group) in the process of provisional apartment allocation which was said to be one-sided, thus prejudicing the rights of consumers. Directions were thus given to the director general of CCI to investigate the matter.

The investigation report concluded that the developer was providing “services” while developing and selling apartments and hence CCI had jurisdiction over the matter. The report also remarked that the relevant market in the present case was “provision of services for development and sale of residential apartments in Noida and Greater Noida.” The investigation report concluded on the basis of available and sold dwelling units that the developer could not be said to be in a “dominant position” in the market since it could not operate independently of the competitive forces.

The CCI felt the need for further investigation and directed the director general to conduct the same. In the supplementary report the DG analysed the concept of integrated township as a separate market and considered it a relevant market in this case. Jaypee was found to have the largest share in this segment and hence was concluded to be in a dominant position in the report.

The CCI discussed the ques-



tion whether the Jaypee group had violated provisions of the Competition Act 2002 and had abused its dominant position. The CCI looked into what was a relevant market. The CCI rejected the analyses of the DG that relevant market was “integrated township” in this case. It opined that “integrated townships” could not be considered a separate product market from “standalone residential projects” since there was sufficient degree of substitutability between standalone residential projects and integrated townships. It was

further held by the CCI that residential houses/villas/apartments constituted a separate market and that the buyer looked into “brand value”, “background”, “number of projects completed”, “delivery timelines”, “value for money”, “amenities”, “design”, “materials”, “fixtures”, “location of the project”, “proximity to railways station, metro station and hospitals” etc as relevant factors and it was on the basis of these that the majority order considered the said market as a distinct product market.

The CCI decided that the rel-

evant geographic market would be Noida and Greater Noida and since these places had a brand image of their own and the delineation given to the market was “provision of services for development and sale of residential apartments in Noida and Greater Noida regions”.

After determining what the relevant market, was CCI looked into the question of dominance and was of the opinion that residential segment of the realty sector was highly fragmented with the presence of large number of players. On the basis of market share and financial resources,

the said builder was seen to have stiff competition. It was, therefore, decided by CCI that the builder did not enjoy a position of dominance in accordance with the provisions of the Competition Act, 2002, in the residential segment in Noida and Greater Noida.

Thus, when buyers are aggrieved and decide to refer their complaints to CCI, they should know that the CCI, before getting into the question of complaints relating to deficient services or unfair practices by the developer, has to ascertain if the builder has abused its dominance in the relevant market as per the provisions of the Competition Act, 2002. The buyers may have grievances against the builders even if the builder does not hold a dominant position in the market. To seek a remedy as consumers, buyers may approach the consumer forum for appropriate jurisdiction for redressal. In such cases, consumer forums may be a better platform because the preliminary question of abuse of dominance in relevant market does not have to be determined and the forum can directly address the grievances of the buyers.

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