

## **MOOT PROBLEM**

1. PLF is a company incorporated under the provisions of Indusland and is one of the leading players in the real estate-construction sector with a handful of other enterprises in the arena. Its major area of activity includes massive residential housing projects, commercial/business parks, as well as infrastructure development.
2. Indusland is a developing country with metropolitan cities spread across its territories. New Tumbai is one of such metropolitan cities which is also referred to by the Indian populace as the commercial capital of Indusland. Naturally, owing to sprawling business and employment opportunities, New Tumbai witnessed immense international migration to it creating an acute shortage of housing.
3. Bahisar is a revenue village located at the outskirts of New Tumbai which is predominantly agriculture oriented land and has a relatively small population as compared to New Tumbai.
4. PLF saw Bahisar as an emerging market to provide housing to the ever increasing population in New Tumbai which was merely a half an hour train journey from Bahisar. Hence, the migrants to New Tumbai would naturally see residential units at Bahisar as a cheaper alternative as against expensive residential units in New Tumbai.
5. Hence, PLF acquired vast areas of land in area of Bahisar closed to New Tumbai. About 02-03 other major real estate enterprises also saw the opportunity and acquired vast area of land in Bahisar but not as close to New Tumbai as PLF. DMK Builders was also one of the major builders who also acquired Land in Bahisar, around 3 kms away from PLF.
6. Eventually, PLF launched a housing complex, 'Solitaire' which, as per initial plan consisted of 368 flats in total in 5 multi-storied residential buildings consisting 19 floors each to be constructed in PLF City, near New Tumbai. The payments schedule was linked to projected stage wise competition of the project with some amount to be paid at the time of booking of the flat, 2 months after the booking date and remaining as per scheduled stage-wise competition of the

project. The advertisements of the builder also guaranteed additional facilities such as clubhouse, gymnasium, sports grounds, clubhouse etc., and ensured completion of the buildings within 36 months from the launch of the project.

7. Interestingly, PLF chose to build the housing complex on a very small portion of land as compared to the vast areas acquired by it. PLF withheld development and construction of the remainder of the land and launched no projects thereon but focused exclusively on Solitaire.
8. When the construction began, 5 buildings itself were constructed, however each building's floor number increased from 19 to 29 leading to an increase in total number of flats from 368 to 564. Additionally, the facilities ensured by the builders were compressed due to shortage of area and the delivery of the apartments were delayed to the owners by 2 years, even though the apartment owners made their payments well on time.
9. Meanwhile, DMK Builders constructed 25 floors while the sanctioned plan was only till 17 floors. They also reduced the amenities which were previously promised by DMK Builders. Earlier, they had promised that they would provide clubhouse, sports arena, gymnasium, Ampitheatre but they did not provide it.
10. The PLF and DMK entered into a verbal agreement that they will reduce the amenities as the construction cost has increased. To cover the extra cost incurred in construction they will reduce the amenities.
11. The Solitaire Owner's Association (SOA) filed a complaint against the PLF Constructions Ltd. with Competition Commission of India (CCI) accusing them of abuse of dominant position by their use of contracts with the apartment owners. In addition to that they alleged that PLF and DMK Builders have entered into an Anti-Competitive Agreement.
12. The DMK Owner's Association(DOA) has also filed the case against the DMK builders with similar issue. Therefore, the CCI has clubbed both the cases.
13. CCI analyzed this information and held that it is a prima facie case of abuse of dominance and Anti-Competitive Agreement and requested

the Director General (DG) to conduct further investigation. PLF immediately challenged the CCI's jurisdiction but dropped the matter subsequently. The DG conducted an in-depth investigation and discovered that the conditions imposed by PLF and DMK did violate certain provisions of the Competition Act.

14. The CCI on the basis of DG's in- depth investigation held that the Act is applicable in the instant case. Subsequently CCI ordered that the Competition Act is applicable to this dispute.
15. CCI ordered that PLF has abused the dominant position in the real estate market through their unilateral powers to alter the provisions in the buyer's agreement without giving any rights to the buyers, PLF's discretion to change inter se areas for different uses such as residential commercial etc., without informing the buyers and PLF's sole discretion to determine ownership rights.
16. CCI also held that the agreement between PLF and DMK Builders is anti-competitive as they by mutual consent (informal) have limited the amenities as they have not provided sports arena and gymnasium and increased the number of flats as well.
17. However, PLF appealed against this order before National Company Law Appellate Tribunal (NCLAT). NCLAT has withheld the order passed by CCI and stated that it was a clear abuse of dominant position by PLF and Anti-Competitive Agreement by PLF and DMK in the real estate market, as per the CCI order, the National Company Law Appellate Tribunal (NCLAT) imposed a penalty of INR 6,300 million on PLF which was 7% turnover of PLF and penalty of 50 million on DMK which was 0.3% of the Total Turnover of DMK Builders.
18. Aggrieved by the decision of NCLAT, PLF Constructions Ltd and DMK constructions has approached the Honourable Supreme Court. The matter is put for final hearing with following issues
  - a. Whether the appeal is maintainable before the Hon'ble Supreme Court?
  - b. Whether PLF is occupying a dominant position in the above relevant market?

- c. Whether the Agreement Between PLF and DMK is Anti-Competitive as per Section 3 of The Competition Act, 2002?

**Note-**

1. The issue of maintainability of the Writ Petition is mandatory to be argued by the parties.
2. Participating teams are allowed to frame additional issues and sub-issues accordingly.
3. Names of People and Organizations are fictional.
4. The Law of Indusland is Pari Pasu with that of the Republic of India.