

The background of the journal cover features a collection of professional items: a pair of black leather brogue shoes in the top left, a black leather bag in the top right, an open notebook with a silver pen on the left, and a black leather watch with a silver face on the right. All items are set against a light-colored wooden surface.

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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **ANALYSING THE IMPACT OF THE BELAIRE OWNER'S ASSOCIATION V. DLF LIMITED AND ORS CASE ON THE INDIAN REAL ESTATE SECTOR**

AUTHORED BY – RISHIT

## **Chapter I : Abstract**

A Rs. 630 crores penalty was imposed on DLF Ltd. by the Competition Commission of India in the *Belaire Owner's Association v. DLF Limited and Ors*<sup>1</sup> case for putting in unfair terms to abuse its dominant position in the contracts it entered into with flat buyers. Following the DLF order, CCI has already begun an inquiry into many real estate companies. The author in this article covers the effects of this order and gives recommendations on where improvement is required.

The best worldwide practises used by various competition authorities in the real estate industry are also covered in the article, as well as the importance of builders' associations in educating its member builders about the advantages of complying with competition laws. In many jurisdictions, even if a violation occurs, the competition regulator may take into account the extent to which a business can show a sincere commitment to compliance with competition rules when deciding the extent of penalties. In other jurisdictions, ethical builders' organisations recommend standard, less biased pro-forma contracts.

Keywords: Competition law, real-estate, penalty, Competition Commission of India, DLF Limited, contract act, violation, regulator, business, compliance, pro-forma.

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<sup>1</sup> *Belaire Owner's Association v. DLF Limited and Ors* [2011] 104 CLA 398.

## **Chapter II : Introduction**

India replaced its antiquated Monopolies and Restrictive Practices Act, 1969<sup>2</sup> with Competition Act, 2002<sup>3</sup>, in accordance with modern and international standards, in response to liberalisation and economic reforms which have been forthcoming since 1991 and in an effort to transition from a "Command and Control" regime to a free market. The Act was enacted in 2003 but was challenged in the Supreme Court and got revised in 2007<sup>4</sup> in compliance with the Supreme Court's instructions.

On May 20, 2009, the Central Government notified the section on the prohibition of "anti-competitive agreements" (Section 3) and "abuse of dominant position" (Section 4), and on June 1, 2011, the portions relating to "regulation of combinations," or the regulation of mergers and acquisitions, etc were notified. All facets of our economy are covered by the Act's provisions, including the real estate industry.<sup>5</sup>

A seismic event rocked the real estate sector on August 12, 2011. In *Belair Owner's Association v. DLF Limited*<sup>6</sup>, the Competition Commission of India (CCI), the agency established under the Act to regulate competition in markets in India, imposed a Rs. 630 crores penalty on DLF Ltd. for putting in unfair terms to abuse its dominant position in the contracts it entered into with flat buyers and instructed DLF to "cease and desist from such conduct" and change the conditions imposed within three months from the order. The fine levied on DLF is the largest ever for violating competition law in India to date and is computed at a rate of 7% of its average revenue compounded for last three financial years. The CCI also recommended the Centre and State Governments to release a regulatory framework for the real estate sector in the aforementioned order. CCI also suggested that it may launch inquiries into the flat purchasers' agreements of other builders in a separate report that was released in the media.<sup>7</sup> In another case, the Maharashtra State Consumer Disputes Redressal Commission ordered a Pune builder to reimburse a flat buyer for the Rs. 6.5 million he paid for a property in 2001 but was never given the possession of. It came

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<sup>2</sup> Monopolies and Restrictive Trade Practices Act 1969.

<sup>3</sup> The Competition Act 2002.

<sup>4</sup> The Competition (Amendment) Act 2007.

<sup>5</sup> Competition Commission of India, *Notifications regarding (a) coming into force of sections of the Competition Act, 2002 pertaining to combinations; (b) increase in value of assets and turnover; (c) exemption regarding "group"; (d) Target exemption, S.O. 479(E), 480(E), 481(E), 482(E)* <https://cci.gov.in/combination/legal-framework/notifications/details/2/0>.

<sup>6</sup> *Belair Owner's Association v. DLF Limited and Ors* [2011] 104 CLA 398.

<sup>7</sup> Press Trust of India, 'CCI modifies apartment buyers agreements in two more DLF cases' (*The Economic Times*, 14 January 2013) <https://economictimes.indiatimes.com/wealth/personal-finance-news/cci-modifies-apartment-buyers-agreements-in-two-more-dlf-cases/articleshow/18021532.cms?from=mdr> accessed 1 July 2023.



crashing on the builder for invoking third-party interest by selling it to a third party.<sup>8</sup>

Recently, the CCI determined a case of power abuse against the Jaypee Group and ordered an inquiry as a result of a complaint made by unit owners at Jaypee Greens Noida.<sup>9</sup> Numerous more real estate behemoths, including Unitech, Parsvnath Developers, and Omaxe Group, may be made subject to the CCI inquiry, according to a media report.<sup>10</sup>

Belaire Owner's Association of Gurgaon, the complainant in the case before the CCI, claimed that DLF had subjected flat allottees to "arbitrary, unfair and unreasonable conditions" which amounts to DLF abusing its dominance in the market for developer/builder services in relation to "high-end residential accommodation" in Gurgaon.

DLF was found to have breached Section 4(2)(a)(i) of the Act<sup>11</sup>, which deals with abusing one's dominant position, by, among other things, imposing "unfair or discriminatory conditions or prices with respect to the purchase or sale of goods or services," directly or indirectly. DLF Ltd. has already filed an appeal contesting the CCI judgement. The Competition Appellate Tribunal deferred the penalty that CCI had levied on DLF Ltd. and requested that the parties shall submit the draft of the corrected terms of the builder-buyer agreement.

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<sup>8</sup> **Nadeem Inamdar, 'Pune builder fails to give flat; consumer forum orders Rs 4.75 lakh compensation to homebuyer' (Hindustan Times, 15 January 2020) <https://www.hindustantimes.com/pune-news/pune-builder-fails-to-give-flat-consumer-forum-orders-rs-4-75-lakh-compensation-to-homebuyer/story-4OFsGEmpaZI9bFEqzMSHaJ.html> accessed 1 July 2023.**

<sup>9</sup> Anwasha Madhukalya, 'Jaiprakash Associates slapped with Rs 13.82 crore fine by CCI for violating norms' (Business Today, 13 August 2019) <https://www.businesstoday.in/latest/corporate/story/jaiprakash-associates-slapped-rs-1382-crore-fine-cci-violating-norms-222685-2019-08-13> accessed 2 July 2023.

<sup>10</sup> Press Trust of India, 'CCI modifies apartment buyers agreements in two more DLF cases' (The Economic Times, 14 January 2013) <https://economictimes.indiatimes.com/wealth/personal-finance-news/cci-modifies-apartment-buyers-agreements-in-two-more-dlf-cases/articleshow/18021532.cms?from=mdr> accessed 1 July 2023.

<sup>11</sup> The Competition (Amendment) Act 2007.

## **Chapter III : Analysis**

The CCI's decision in the DLF case, which imposes the highest fine ever for violating India's competition laws to date, had a significant impact on the country's real estate market, which was already suffering from high inflation and increasing home loan rates, which further slowed demand. There are several projects where delays are out of the developers' scope, and the industry suffers if authorities start enforcing stricter rules. The DLF case has set a precedent which has led to similar lawsuits, which isn't good for the sector.

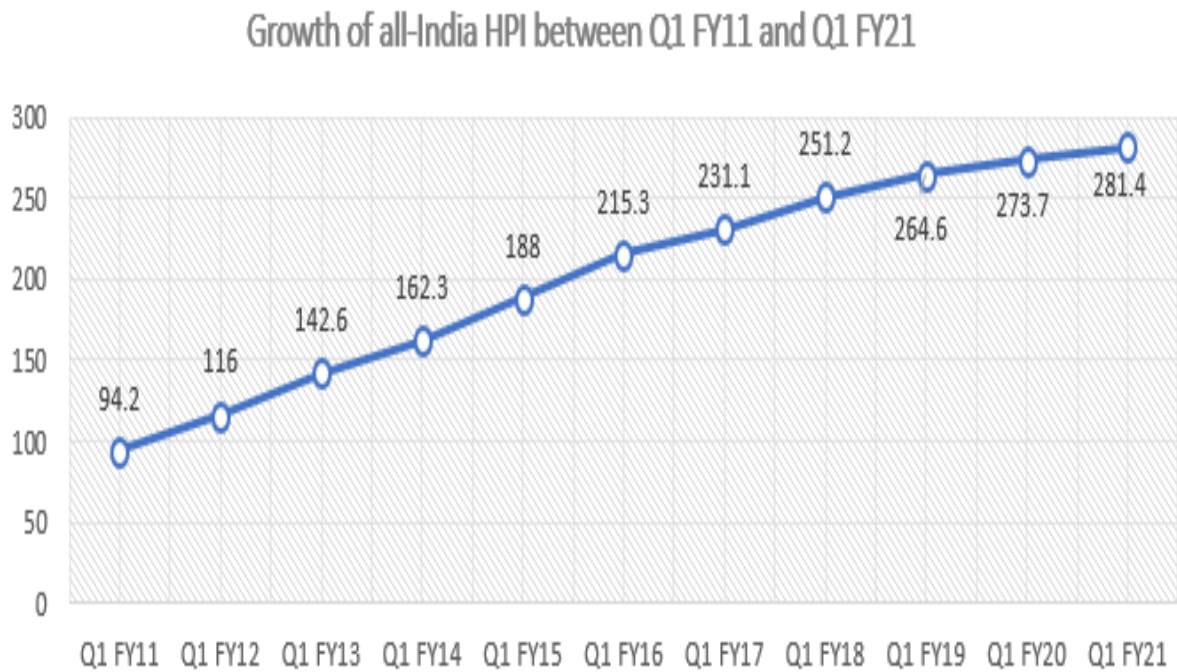


Figure 1 : Growth of all-India High Price Index(HPI) between Q1 FY11 and Q1 FY21.

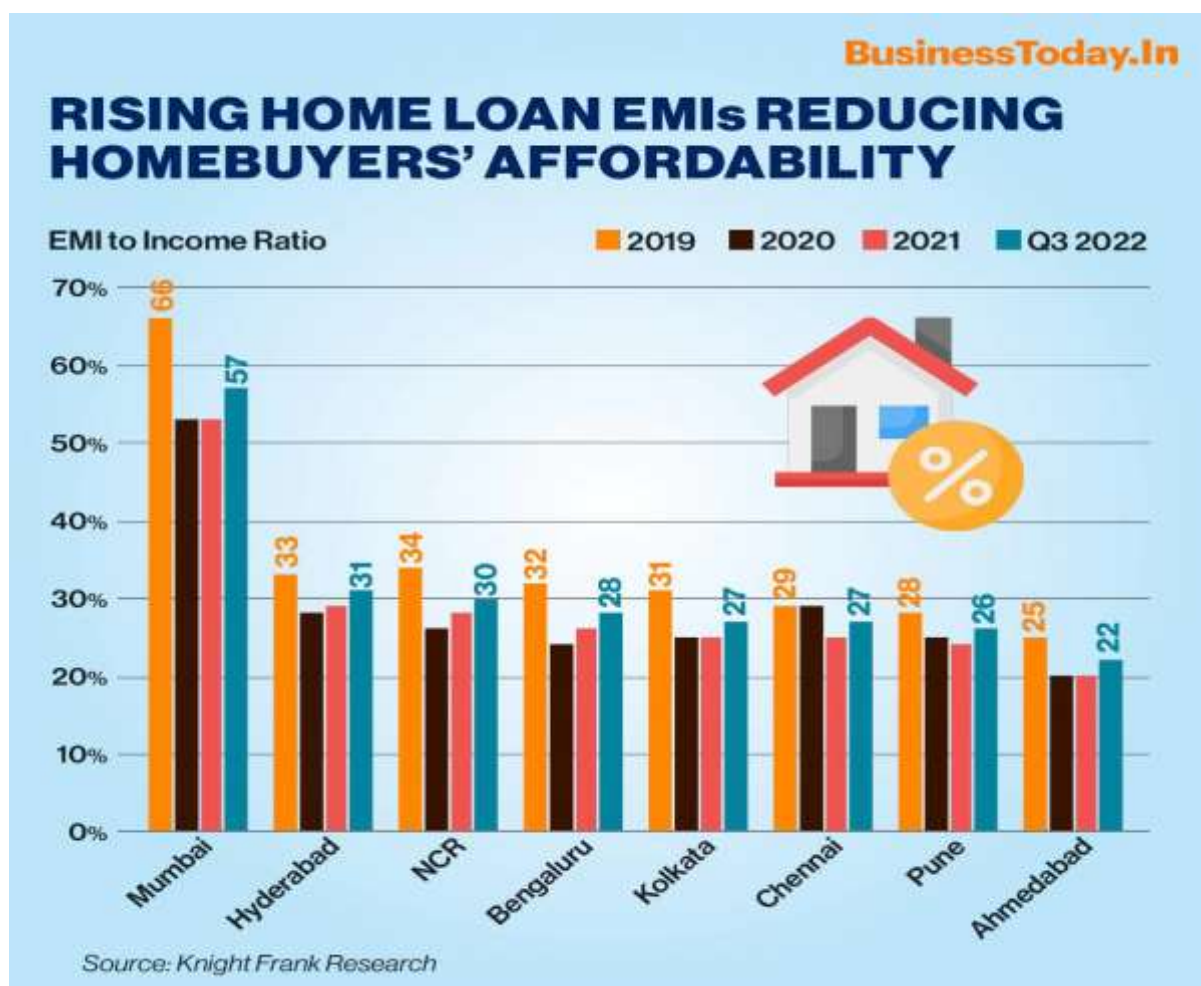


Figure 2 : Rise in Home Loans in some major Indian cities between Q1 FY19 to Q3 FY22.

The decision is significant for multiple reasons. First, it was the first case in which the Indian competition law has addressed the "exploitative" aspect of "abuse of dominant position," as the majority of the jurisprudence on the subject has focused on abuses that have the effect of excluding competitors like predatory pricing and refusal to deal. Second, the ruling overlaps with established notions of "unfair trade practice," which were previously thought to be exclusive to consumer disputes. Third, the order has also brought to light an extensively adopted industry practise wherein builders use the money they receive from customers for other projects. Fourth, the decision demonstrates that the CCI still has to depend on international jurisprudence, specifically the US and EU, when making decisions. However, there is still some uncertainty regarding the method employed by the CCI for calculating the penalty because, unlike other jurisdictions, there are no clear-cut rules for the imposition of such severe financial penalties. The builders have to be cautious when drafting "Flat Buyer Agreements" to prevent such violations to avoid such high penalty. This is because the highly complex definition of what amounts to a "dominant position" under Section 4 of the Act<sup>12</sup> is based not only on market share but also on a number of factors.

<sup>12</sup> The Competition (Amendment) Act 2007.

## **Chapter IV : Competition Compliance as the Way Forward**

The real estate sector has to be aware that competition legislation is meant to protect free and fair competition since doing so is in the best interests of all businesses operating in the sector as well as the customers they serve. Competition is one of the key prerequisites for a free-market economy and is required to attain economic efficiency. Competition motivates businesses to increase their efficiency, which lowers the cost of goods and services, enhances quality and raises demand. The real estate industry is not exempt from these general rules. In order to ensure non-indulgence in anti-competitive stunts, the real estate industry must voluntarily uphold the highest standards of competition law compliance for which fair competition in business must be practiced. Therefore, it is also necessary to rewrite the flat buyer agreements in compliance with both the fundamentals of competition law and the Act's requirements in specific. For instance, all such agreements in Maharashtra must follow the standard format specified by the Maharashtra Ownership Flats Act, 1963. (MOFA).<sup>13</sup> The legislative provisions of this sample agreement's clauses 1 through 5, 8 through 13, and 22 must be included. If there is to be any semblance of openness in this matter, further stipulations may and should be discussed between the builder and the apartment buyer. The relevant market in the DLF case according to the CCI is "the high-end residential market in Gurgaon." Similar "relevant markets" may also exist in other major Indian cities. If any group of people who have been allotted similar apartments filed a complaint, the CCI would have the onus to intervene again due to the precedent set by DLF case, and the builders would get subjected to similar sanctions. The solution lies in introducing a voluntary internal review of the existing contracts and the ones to be signed with in the future to ensure consistency with the rules of the competition.

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<sup>13</sup> Maharashtra Ownership Flats Act 1963.

## Chapter V : Conclusion

Competition law action is very costly in addition to harming a firm's reputation and share value, especially in the case of a public quoted corporation. The Act moreover includes provisions that, in addition to the duty levied on the company, the CCI has the authority to set personal liabilities on top management even in the event of unintentional breaches by the firm's staff. The punishments and fines specified under the Act are quite substantial. Around 20 more countries are about to implementing a competition law framework, after being adopted by more than 110 nations worldwide, including neighbours like Pakistan and China. Therefore, adherence to competition legislation should be the main focus of any company's risk management plan.<sup>14</sup>

Appendix table. Enactment of competition law in Asia-Pacific countries.	
	Year of enactment
Australia	1976
New Zealand	1986
Japan	1987
Israel	1987
Libanon	1987
India	1988
Pakistan	1988
Thailand	1988
Republic of Korea	1988
Sri Lanka	1987
Uganda	1988
South Korea	1988
Taiwan Province of China	1990
Viet	1992
Libanion	1992
China	1992
Taiwan	1992
Uganda	1993
Egypt	1994
Turkey	1994
Germany	1998
Indonesia	1999
Australia	In Process
India	In Process
Malaysia	In Process
Myanmar	In Process
Nepal	In Process
Philippines	In Process
Uganda	In Process
Taiwan	In Process

Notes: Prepared by CCTS from national sources. Some other countries may also be in the process of creating a competition law and they have been informally included here.

Figure 3 : Enactment of Competition Law in Asia-Pacific Countries.

For ensuring compliance with competition legislation and quick discovery in the event of any inadvertent violations, it is advised that all enterprises should have a Competition Compliance Programme (CCP) within their ranks. It operates under the tenet "prevention is better than cure." It is created with consideration for the unique needs of an organisation.

A successful compliance strategy would entail educating and training staff members who could participate in or be exposed to anti-competitive behaviour. The plan should include a way to spot any infractions so that preventative, corrective, and remedial action may be taken. Effective compliance not only lowers the likelihood of violations, but also makes prompt identification easier and may help lessen fines by recommending information sharing at the earliest opportunity. A constant evaluation is necessary to ensure the programme's effectiveness. Senior management must also provide ongoing support, which ought to be underlined and made prominent.

<sup>14</sup> 'Competition law' (Wikipedia, 3 July 2023) [https://en.wikipedia.org/wiki/Competition\\_law](https://en.wikipedia.org/wiki/Competition_law) accessed 6 July 2023.