

IN THE COMPETITION APPELLATE TRIBUNAL

2ND Floor, Federal Courts Complex, G-11/1, Islamabad

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Tel No: 051-9320208, Fax No: 051-9320203

No. 1453 /Reg./CAT/2024

Dated: 11-07-2024

M/S Eden Builders

Vs.

Competition Commission of Pakistan

NOTICE

Appeal No.17/2018

Take notice that under rule 51 of the Competition Appellate Tribunal Rules, 2015, attested copies of the Judgment dated **11-07-2024** is enclosed for information and record.

2. Given under my hand and stamp of the Tribunal, this 11th day of July, 2024.

S. Afzal

(SAEED AFZAL)

Registrar

REGISTRAR

Competition Appellate Tribunal
Government of Pakistan
Islamabad

Eden Builders (Private) Ltd.,

Through its duly authorized representative,
Eden Towers, M-4, 82-E/1, Main Boulevard,
Gulberg-III, **Lahore.**

Waqqas Ahmed Mir,

Advocate High Court,
Advocates & Legal Consultants,
5-S, Gulberg-II, **Lahore.**



✓ **Competition Commission of Pakistan,**

7th Floor ISE Towers, 55-B,
Jinnah Avenue, **Islamabad.**

Chairman Secretariat
Diary No. 7/6 Ext. 12-7-24
Date Received 12-7-24
Date Forwarded 12-7-24

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BEFORE THE COMPETITION APPELLATE TRIBUNAL, ISLAMABAD

Appeal No. _____/2018

Eden Builders (Private) Ltd through its duly authorized representative, with its address at Eden Towers, M-4, 82-E/1, Main Boulevard, Gulberg III, Lahore

Versus

Competition Commission of Pakistan through its Chairman, 7th Floor ISE Towers, 55-B, Feroz Avenue, Islamabad

APPEAL UNDER SECTION 42 OF THE COMPETITION ACT, 2010 READ WITH ALL OTHER ENABLING PROVISIONS OF LAW

Respectfully Submitted,

1. Jurisdiction of the Competition Appellate Tribunal

The Appellant declares that the subject matter of the Appeal falls within the statutory jurisdiction of the Appellate Tribunal.

2. Limitation

The Appellant further declares that the Appeal is within the limitation period as prescribed in section 42 of the Competition Act, 2010. The Order under challenge in this Appeal ('The Impugned Order') was passed on 15-12-2017, and a certified copy delivered to the Appellant on 22-12-2017, therefore this Appeal is being filed within the 60-day period of limitation given in the Competition Act, 2010 ('The Act').

3. Facts of the case and the details of the orders against which the Appeal is preferred

The facts of the case are given below:

- (i) The Appellant is a private limited company incorporated in Pakistan and is engaged in the development and marketing of residential housing projects. The Appellant is an

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Competition Appellate Tribunal
Islamabad
Dated: 11-01-2024

BEFORE THE COMPETITION APPELLATE TRIBUNAL,
ISLAMABAD

EDEN BUILDERS (PVT.) LTD

.... APPELLANT

VERSUS

COMPETITION COMMISSION OF PAKISTAN

.... RESPONDENT

Appeal No: 17/2018

- Present:** Justice Mazhar Alam Khan Miankhel, Chairperson.
Muhammad Asghar Ch., Member Technical
Raja Saad Sultan, Member Technical
- For the Appellant:** Mr. Anas Awan, Usama Jamshed, Salman Ejaz,
Advocate, Meera Hayat, Ahmed Hassan, Eman
Adnan, Advocates.
- For Respondents:** Mr. Ahsan Jamal Pirzada, Abdullah Noor,
Advocate, Hassan Ahsan Mian & Mr. Haider
Imtiaz, Law Officer.
- Dates of hearing:** 20.03.2018,10.04.2018,12.06.2018, 09.07.2018,
03.10.2018,24.10.2018,28.11.2018, 12.12.2018,
04.01.2022,09.03.2022,14.06.2022,21.09.2022,
26.10.2022,07.12.2022,17.01.2023, 02.02.2023,
09.05.2023,31.05.2023,20.06.2023,18.01.2024,
24.01.2024.

JUDGMENT

Raja Saad Sultan, Member Technical.

Through the instant appeal under **Section 42 of the Competition Act,2010** the appellant impugns the order dated 15-12-2017 passed by the Competition Commission of Pakistan (“**Commission**”), whereby, a penalty of Rs 25,00,000 was imposed on the appellant for the contravention of **Section 10 of the Competition Act,2010** and was further directed to amend its advertisements.

2. The facts essential for the disposal of the instant appeal are that the appellant, is a private limited company and is engaged in the development of residential housing projects. The appellant is alleged to be an associated company of Orange Real Estate development Co (Pvt.) Limited, which acquired Al-Hamra Avenue (Private) Limited after obtaining an approval of the Competition Commission of Pakistan. Al-Hamra Avenue was engaged in the development of a project in Islamabad, which was



EDEN BUILDERS (PVT.) LTD
VERSUS
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approved by the Capital Development Authority (CDA). vide approval No: CDA/PLW-HS (RP) 2 (865)/2005/162. When Orange Real Estate Development Co (Pvt) Limited acquired Al-Hamra Avenue, an application dated 18-09-2013 was submitted to the CDA to change the project's name from Al Hamra Avenue to Eden Life Islamabad. A civil Suit for Declaration, Permanent and Mandatory Injunction was also filed against the CDA, before the Senior Civil Judge (West) Islamabad in which an interim relief was granted vide Order dated 10-01-2015.

3. The appellant, therefore re-launched the project with the name of Eden Life Islamabad and started its marketing campaign. The Competition Commission of Pakistan ("Commission") took suo moto action and conducted an enquiry. The Enquiry Report recommended proceedings against the appellant for violating **Section 10 (1), 10 (2) (a) and 10 (2) (b) of the Act**. The proceedings were initiated against the appellant under Section 30 of the Act, resulting in a show cause notice being issued on 23-05-2016.

4. The learned Counsel for the appellant submitted, the appellant has not violated any provision of the Competition Act. The First Claim of the Commission that the project is at distance of 20 to 22 minutes from Serena Hotel, rather than 12 minutes as claimed by the appellant is not justified. He contends that the exact distance and location of the appellants project is accurately mentioned in its advertisements. The travel time indicated is a rough estimation and it depends on an average speed of a vehicle and other conditions. Further submits that the buyers always make their purchase decision after conducting thorough due diligence and also frequently visiting the project site. He argues that the Commission's Second Claim regarding the disclaimer about the price mentioned in the advertisement, excluding development charges is also not made out. The advertisement should be viewed as a whole and in the advertisement next to the price, there is an Asterix mark that clearly indicates to an ordinary consumer that a disclaimer is attached with the price. The disclaimer is in contrasting colours and is therefore clearly

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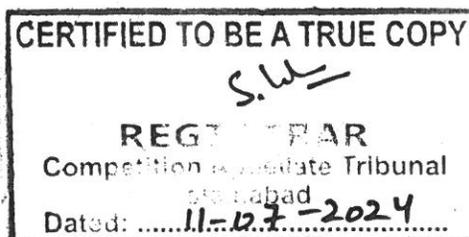
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Dated:11-07-2024.....

legible. He submits that the appellants case is distinguishable from the cases relied upon by the Commission. The appellants disclaimer satisfies the requirements of Prominence, Presentation, Placement and Proximity as explained in US- FTC guidelines. He argues that the Commission's Third Claim, stating that the Appellants project is not approved by the CDA is also incorrect. The appellant has not made any false statement regarding this claim. The approval was granted in the name of Al-Hamra Avenue, which was later on acquired by the appellant. An application for the change of name was also filed before the CDA, which was not considered and hence a Civil Suit was filed and we were allowed by the Court to use that name of Eden Life Islamabad. He finally submitted that this practice has to viewed in the perspective of a consumer acting reasonably under the circumstances. Learned Counsel for the appellant, therefore prayed for the instance appeal to be allowed.

5. The learned Counsel for the Competition Commission of Pakistan ("**Commission**"), inter alia, argued that there is no case to argue. The appellant has already admitted this practice and also filed commitment before the Commission. The Commission has taken a lenient view and has exercised its discretion under the Regulation 37 of the Competition Commission (General Enforcement) Regulations, 2007. He therefore prayed that the instant appeal may be dismissed.

6. We have heard the contentions of the learned Counsel for the parties and perused the record with their able assistance.

7. The Competition Commission of Pakistan took suo moto action against the appellant under **Section 37 (1) of the Act**, which gives power to the Commission to initiate enquiry on its own. The enquiry report concluded that; "*Luring money from innocent consumers on the basis of false claims is a deceitful practice which demands timely action by the regulators and law enforcing agencies. The prima facie violations discussed above in terms of finding of the enquiry report warrant initiation of proceedings against Eden Builders (Pvt.) Limited under Section 30 of the Act*".



8. Perusal of enquiry report indicates that the appellant had advertised its project Eden life Islamabad in print and electronic media and claimed that their project is approved by the Capital Development Authority (CDA) and is located at a distance of 5 minutes from CDA Enclave, Chak Shehzad and 12 minutes from the Serena hotel. Record indicates that the appellant was asked to provide the relevant information vide letter dated 27-08-2015. The Commission is required to call for the relevant information from the Undertaking during the enquiry in accordance with **Section 36 of the Competition Act**, read with Regulation **23 (2) of the Competition Commission (General Enforcement) Regulations, 2007**. The relevant information was provided by the appellant, however, they denied the allegation of deceptive marketing practices.

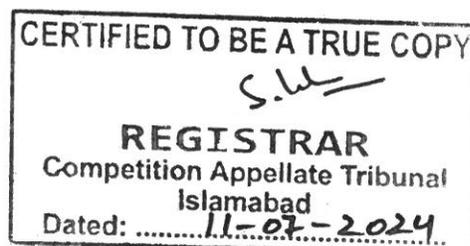
9. On the recommendation of enquiry committee proceedings were initiated against the appellant pursuant to **Section 30 of the Act** for the alleged violation of **Section 10 of the Competition Act** and a show cause was issued to the appellant. The reply to show cause was also submitted by the appellant. In their reply the appellant denied their involvement in deceptive marketing practice and further provided the detail of their project.

10. **Section 10 of the Act** reads as follows,

“Deceptive marketing practices (1), No undertaking shall enter into deceptive marketing practices.

(2) The deceptive marketing practices shall be deemed to have been resorted to or continued of an undertaking resorts to,

Sof



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(a) the distribution of false or misleading information that is capable of harming the business interests of another undertaking,

(b) the distribution of false or misleading information to consumers, including the distribution of information lacking a reasonable basis, related to the price, character, method, or place of production, properties, suitability for use, or quality of goods,”

(c)

(d)

11. In view of Section 10 of the Act, we have reviewed the appellants three primary claims contained in the advertisement.

- (a) Location and Proximity of Eden Life Islamabad
- (b) Disclaimer of development charges to the price representation.
- (c) Legal Status of Eden Life Islamabad.

12. The first claim of the appellant was that their project Eden Life Islamabad is located at a distance of 5 minutes from the CDA Enclave, Chak Shehzad and 12 minutes from Serena hotel Islamabad. The appellant in their reply before the Commission has admitted that this time calculation is a rough estimate. However, in their advertisement they presented this as an absolute claim without any reasonable basis. The advertisement creates the first impression of the undertaking, and an ordinary consumer always rely on the general impression. The Commission has relied on the case of *M/S Proctor and Gamble Pakistan (Private Limited) reported as 2010 CLD 1695* . We agree with the Commissions finding and observe that there is no credible evidence indicating that the appellant considered relevant factors in determining the distance of their project. Marketing practice is considered to be deceptive, where it tends to mislead an ordinary consumer. Under the Black’s Law Dictionary Misleading is defined as “delusive,

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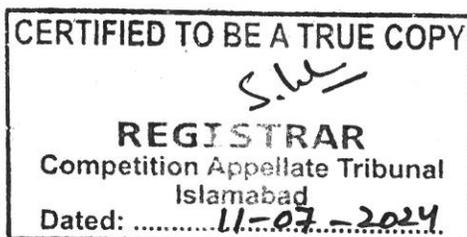
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 Islamabad
 Dated:11-07-2024.....

calculated to lead astray or to lead into error". Therefore, the misleading information can distort the consumer behavior and decision making. In view of this, the Commission has rightly held the appellant liable **under Section 10 (2) (b) of the Act.**

13. The second claim of the appellant was that of the price, which was mentioned as "1 Kanal 53 Lakh Se" with asterisk mark on it. This asterisk mark was in fact a disclaimer, which stated that "Without development charges". Perusal of the advertisement shows that the disclaimer was not clearly legible. It was placed vertically on the advertisement and in a much smaller font as compared to the font size used for the price. The Commission has appropriately considered the factors such as, Prominence, Presentation, Placement and Proximity, when evaluating the adequacy of disclosures. It is essential to ensure that the consumers are not misled and can make an informed purchase decision. The disclosures should be clear, legible and appropriately placed to prevent from misleading consumers. Therefore, the illegible disclaimer in the appellants advertisement constitutes a violation of Section 10(2) (b) of the Act.

14. The appellants third claim in the advertisement was pertaining to the approval of the project by the Capital Development Authority (CDA). The disclosure of the projects approval from CDA in the name of Al-Hamra Avenue was not clear and legible in the advertisement. Record indicates that the project was approved by the CDA in the name of Al-Hamra Avenue (Pvt.) Limited vide approval No: CDA/PLW-HS (RP) 2 (865)/2005/162, dated 15-03-2008. The appellant submits that Al-Hamra Avenue (Pvt) Limited was acquired by Orange Real Estate development Co (Pvt.) Limited, which is an associated company of the Eden Group. However, there is no evidence, which indicates that Orange Real Estate development (Pvt.) Limited is part of Eden Group. **Securities and Exchange Commission of Pakistan-Group Companies Registration Regulations, 2008** deals with the issue and,

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Regulation 2 (1) (i) defines the Group as,

- (i) "Group means a holding company and its subsidiaries registered with the Commission under Regulation 4 of these Regulations".

Regulation 4 states,

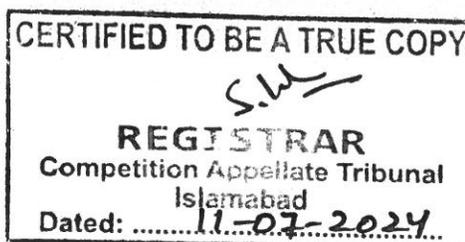
"Where the Commission is satisfied with the application made under Regulation 3, it may register the holding company and its subsidiary companies as a Group in form 1".

15. In view of the above regulations there is nothing on record which confirms that the Orange Real Estate Development (Pvt.) Limited is an associated company of Eden Group, as claimed by the appellant. Furthermore, an application was moved by Al- Hamra Avenue (Pvt.) Ltd, before the CDA for the change of name of the project from Al-Hamra Avenue to Eden Life on 18-09-2013, which was not decided. A civil Suit for Declaration, Permanent and Mandatory Injunction was also filed against the CDA before the Senior Civil Judge (West) Islamabad in which an interim relief was granted till next date of hearing vide Order dated 10-01-2015. Therefore, in view of the above, it appears that the appellants disclosure aims to attract consumers by misleadingly suggesting that the project has received the approval of CDA.

16. Record indicates that the appellant has amended the advertisements and also filed the first commitment on 14-11-0216 and an amended commitment on 26-05-2017 before the Commission pursuant to **Part IV of the Competition Commission (General Enforcement) Regulations, 2007**. The amended advertisement indicated that Eden Life Islamabad is a project of Al-Hamra Avenue (Pvt) Ltd, which completely contradicts the appellants previous claim that Al-Hamra Avenue had been acquired by Orange Real Estate Development (Pvt) Limited.

17. The appellant has therefore distributed false and misleading information to consumers, lacking a reasonable basis as to the price, characteristics and suitability for the use. Therefore, the appellants this conduct constitutes a violation of **Section 10 (1), 10 (2) (a) & (b) of the Competition Act, 2010**. The Commission has appropriately imposed a penalty of Rs. 25,00,000 on the basis of the appellants conduct

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and commitment filed before the Commission. In Case Reported as **Lahore Stock Exchange Vs. Director (ICW) SECP 2019 CLD 626**, it was stated that,

“The amount of penalty reflects on the seriousness of the infringement, the duration of the infringement, the degree of harm caused if any, whether actual or potential”.

18. In view of above the Commission has appropriately considered a commitment filed by the appellant and imposed a penalty in accordance with **Regulation 37(1) of the Competition Commission (General Enforcement) Regulations, 2007, read with Section 38 of the Act.**

19. We, therefore, do not find any irregularity in the order passed by the Commission, therefore the instant appeal is dismissed.

-s-d-

Chairperson

-s-d-

Member Technical-I

-s-d-

Member Technical-II

Announced in open court

11.07.2024

Approved For Reporting

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Member Technical-II

