

COMPETITION COMMISSION OF PAKISTAN

DRAFT OF ENQUIRY REPORT

(Under the provisions of Section 37(1) of the Competition Act, 2010)

**IN THE MATTER OF ENQUIRY CONDUCTED AGAINST M/S GREEN FIELD
DEVELOPERS (PVT) LTD FOR DECEPTIVE MARKETING PRACTICES**

BY

Noman Laiq & Marryum Pervaiz
Dated: 11/03/2016

1. BACKGROUND:

- 1.1. This enquiry report has been prepared pursuant to a *suo motto* enquiry conducted by the Competition Commission of Pakistan (the '**Commission**') under Section 37(1) of the Competition Act, 2010 (the '**Act**') for, *prima facie*, violation of Section 10 of the Act i.e. deceptive marketing practices.
- 1.2. M/s Green Field Developers (Pvt) Ltd (hereinafter refer to as "undertaking") in advertising one of its projects 'Green City' is using the name of Islamabad in their promotional material. It has been observed that the undertaking has no reasonable basis to use the name of Islamabad and is disseminating misleading and false information to the consumers that lacks a reasonable basis, related to character, properties, suitability or quality of project that prefer its purchase over other similar projects available in the market. Hence the claim is also capable of harming the business interest of other entities.
- 1.3. Keeping in view the above, the Competent Authority after the primary investigation has initiated an Enquiry in accordance with sub-section (1) of Section 37 of the Act by appointing Mr. Noman Laiq, Director (OFT) and Ms. Marrayum Pervaiz, Deputy Director (OFT), as the enquiry officers (hereinafter refer to as '**Enquiry Committee**'). The undersigned enquiry committee was directed to conduct an enquiry and to submit the report by giving findings and recommendations *inter alia* on the following:
 - (i) Whether the undertaking is disseminating false/misleading information to the consumers that is lacking a reasonable basis, related to character, properties, suitability or quality of project in violation of Section 10(2)(b) of the Act?
 - (ii) Whether the conduct of the undertaking is capable of harming the business interest of other undertakings in violation of Section 10(2)(a) of the Act?

2. CORRESPONDENCE WITH THE UNDERTAKING:

- 2.1 According to the information available on the website¹, the undertaking was formed in the year 2005. They started advertising their project 'Green City' which is situated in Fateh Jang. The advertisement of the said project has been seen on various sign boards, billboards and other promotional material in which they were using the name of Islamabad with their project name frequently.

¹ <http://greencityislamabad.com/green-city-islamabad/>

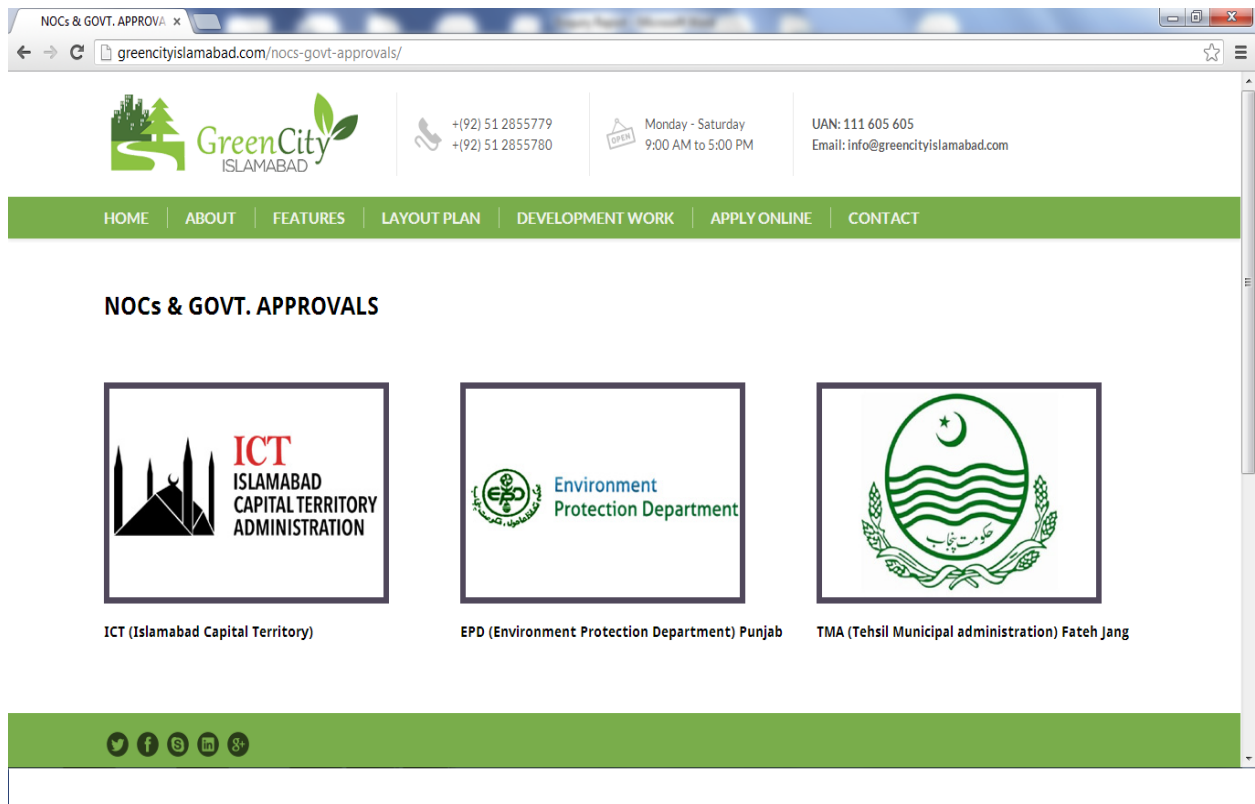
DISPLAY ON ISLAMABAD HIGHWAY (IMAGE:1)



- 2.2 The advertisement, *prima facie*, gives an impression as if the project is situated in Islamabad. However, it has been observed that they have obtained the No Objection Certificate (NOC) from Tehsil Municipal Administration (TMA) Fateh Jang. In order to enquire the fact initially, a letter for the provision of information was written to the undertaking dated:20-08-15. However, the enquiry committee didn't receive any response from the undertaking in the given time period. It has also been observed by the enquiry officers that the undertaking was also using the official logos of different Government bodies/ departments in their brochure and on their website under the head of NOC's and Government approvals².
- 2.3 Copy of the same is reproduced below:

² <http://greencityislamabad.com/nocs-govt-approvals/>

DISCLOSURE ON WEBSITE (IMAGE:2)



- 2.4 A reminder was issued to the undertaking dated: 01-10-2015, in which they were asked not only to clarify the reason of using the name of Capital City 'Islamabad' with their project name but were also asked to clarify the reason of using the logos of Government departments on their promotional material. In response to the reminder a letter dated: 07-10-2015 was received by the undertaking, in which they requested for an extension in time to file the reply. Considering the request of the undertaking, the time period to file the reply was extended to 19-10-2015 and they were advised to make their submissions in the given time period. On 29-10-2015, an unsatisfactory reply was received by the undertaking in which they submitted that due to the oversight/ misunderstanding, brochures under enquiry were printed however, their distribution has been stopped.

3. RESPECTIVE AUTHORITIES:

- 3.1 Any undertaking that intends to initiate planning or development scheme within the territory of Islamabad should seek permission from Capital Development Authority (CDA). Similarly for housing projects situated in Fateh Jang, NOC from TMA Fateh Jang is required. It is therefore important to have a general introduction about both the authorities.
- (i). Capital Development Authority (CDA)
 - (ii). Tehsil Municipal Administration (TMA) Fateh Jang

i. CAPITAL DEVELOPMENT AUTHORITY (CDA):

- 3.2 Capital Development Authority (CDA) was established on June 14, 1960, first by an executive order issued on June 24, 1960 entitled the Pakistan Capital Regulation, to be superseded by the CDA Ordinance issued on June 27, 1960. The CDA Ordinance constituted the authority, laid down its charter and defined its power, duties, functions and responsibilities.
- 3.3 Objective of the CDA Ordinance was firstly planning and development of Capital (Islamabad), secondly completing or authorizing CDA to perform functions of a Municipal Committee and to provide for cleanliness, health, education of inhabitants, supply of goods, articles of food and mild, to promote interest of different sections of public. All provisions are for advancing interest and public good.
- 3.4 CDA being a statutory body is expected to deal with citizens fairly, and honestly and conduct its all actions transparently. Whereas it was expedient to establish a CDA for making all arrangements for the planning and development of Islamabad within the frame-work of a regional development plan.

a. CDA Ordinance 1960:

Powers and Duties of the Authority:

The Board in discharging its functions shall act on sound principles of development, town planning and housing and shall be guided on questions of policy by such directions as the {Federal Government} may from time to time given.³

Master Plan And Master Programme

- 3.5 The Authority shall prepare a master plan and a phased master programme for the development of the Capital Site, and may prepare a similar plan and programme for the rest of the Specified Areas, and all such plans and programmes shall be submitted to the Federal Government for approval.

Preparation Of Schemes By Local Bodies Or Agencies

- i. The Authority may, pursuant to the master plan and the master programme, call upon and local body or agency operating in the Specified Areas to prepare, in consultation with the Authority, a scheme or schemes in respect of matters ordinarily dealt with by such local body or agency and thereupon the local body or agency shall be responsible for the preparation of the scheme or schemes within a reasonable time.
- ii. Such schemes, may relate to:
- (a) Land use, zoning and land reservation.

³ <http://www.cda.gov.pk/documents/docs/cda-ordinance-1960.pdf>

- (b) Public buildings.
 - (c) Industry.
 - (d) Transportation and communications, highway, roads, streets, railways, aerodromes.
 - (e) Telecommunication, including wireless, television, radio, telephone.
 - (f) Utilization of water, power and other natural resources.
 - (g) Community planning housing slum clearance amelioration.
 - (h) Community facilities including water supply, sewerage, drainage, sewage, disposal, electricity supply, gas supply and other public utilities
 - (i) preservation of objects or places of historical or scientific interest or natural beauty.
- iii. The {Federal Government) ,by notification in the official Gazette, add to alter or amend the list of subjects given above and any such addition alteration or modification shall take effect as if it had been enacted in this Ordinance.
- iv. The expenditure incurred on the preparation of any such schemes as aforesaid shall be borne as agreed to between the Authority and the local body or agency, and in the event of disagreement between them as may be determined by the {Federal Government)
- v. No planning or development scheme shall be prepared by any person or by any local body or agency except with the concurrence of the Authority.**

b. Islamabad Capital Territory (Zoning) Regulation 2005:

- 3.6 For the purpose of this ICT Regulation 2005, the entire Islamabad Capital Territory shall be divided into the following five zones:⁴

Zone-I
Zone-II
Zone-III
Zone-IV
Zone-V

- 3.7 The brief introduction of these zones is as below:

Zone-1: This zone constitutes sectors up to the existing alignment of the G.T. road from the point of intersection of G.T. road with Shahrah-e-Kashmir to the point of the Nicolson Monument inclusive of sector H- 14, H-15, H-16, H-17, I-14, I-15, I-16, I-17

Zone -2 : The zone consists of an area bounded by G.T. road in the north & north east, north of Shahrah-e-Kashmir and Capital limits in the west, comprising residential sectors G-15 (part), G-16, G-17, F-15 (part), F-16, F-17, E-15 (part), E-16, E-17, D-16, D-17, C-17, AND B-17.

⁴ <http://www.cda.gov.pk/documents/docs/bcs-2005.pdf>

Zone –3

Margallah Hills National Park as notified under section 21 of the Islamabad Wild Life (Protection, Preservation, Conservation & Management) Ordinance. 1979, Other protected ranges, forest areas and un-acquired land falling between the Margallah Hills & north of Murree Road shall constitute this zone.

Zone-4

This zone comprises Islamabad Park and rural periphery wedged between Murree road towards north and Lehtrar road towards south and extending beyond Simly road upto the ICT limits in the north east. This zone excludes the part of Margallah Hills National Park and Rawal Lake.

Zone-5

This zone comprises areas falling south of Islamabad Park and extending upto outer limits of ICT towards south, south west and south east.

Development Strategies of Zones

- 3.8 ICT zoning regulations 2005 gives a clear picture of development strategies that much be followed by the private schemes/ undertakings starting development within the territory of Islamabad. The relevant extracts of the zoning regulations are as under:

For Zone-1:

no private scheme of any kind whatsoever shall be allowed, except in sector E-11, Schemes in E-11 will regulated according to the provisions applicable to schemes in Zone-2

For Zone-2:

- a. private sector will be allowed to purchase/acquire land and develop residential schemes in accordance with the pattern of residential sectors planned in zone 1.***
- b. permission for such schemes shall be granted by the authority subject to the following conditions, namely:***

For Zone-5:

- (a) the existing urban sprawl will be organized into a planned urban development and housing scheme will be encouraged;***
- (b) a broad outline development plan shall be prepared by the Authority in whose context the schemes shall be considered for approval. The minimum area of such a scheme shall not be less than 100 acres;***

- (c) ***the detailed lay-out plan and development specifications of the scheme shall be subject to the approval of the Authority;***
- (d) *the schemes shall have their independent accesses and roads, water supply and primary sewerage treatment systems to be developed by the sponsors at their own cost and expense;*
- (e) *the possession of individual plots in the scheme shall not be handed over to allottees until the land is fully developed by the sponsors and completion certificate in this regard obtained from the Authority.*
- (f) *all land reservations made for roads and utilities in such schemes shall belong to the Authority:*
- (g) *the sponsors shall deposit with the Authority as security hundred percent (100%) estimated total cost of development of the scheme or shall mortgage thirty percent (30%) of the saleable area in lieu thereof till a completion certificate is obtained by the sponsors from the Authority in respect of the scheme.*
- (h) *all the buildings to be constructed in the zone shall be subject to the Islamabad Building Regulation, 1963, and Islamabad Residential sectors Zoning Regulation, 1985.*
- (i) *After completion and allotment, the scheme shall be maintained by the sponsors or by an association of the allottees, as the case may be till such time the scheme is taken over by the Authority.*
- (j) *all such permission shall be subject to payment of Scrutiny Fee/Service charges as determined and levied by the Authority from time to time, and without prejudice to the right of the Authority to acquire the land in public interest.*
- (k) *Individual construction not falling within the scheme approved by the Authority will not be permissible. However, repair of old houses and expansion of existing houses may be allowed once by the Authority to the native residents subject to the conditions that the site is located within the limits of the main body of the village. The covered area of such construction shall not exceed 1000 sq. feet including expansion and such permission shall not in any way impede the right of the Authority to acquire the property wherever needed in the public interest, such requests shall be routed through the concerned Union council*

ii. **TEHSIL MUNICIPAL ADMINISTRATION (TMA):**

3.9 There are five Tehsil Municipal Administrations in District Attock which are given below:

1. Fateh Jang
2. Hazro
3. Hassan Abdal
4. Jand
5. Pindi Gheb

3.10 Fateh Jang is located at a distance of 50 kms from Islamabad on Islamabad-Kohat road and 48 kms from Attock city. It is connected to other cities like Talagang, Rawalpindi and Kohat through roads and railways. There are 14 Union Councils in the Tehsil out of which only 2 fall in urban areas.

Functions and Powers of the Tehsil Municipal Administration (TMA):

3.11 The relevant functions and powers of the TMA, according to the Punjab Local Government Ordinance, 2001, shall be to⁵:

a) Prepare spatial plans for the Tehsil in collaboration with Union Councils including plans for land use, zoning and functions for which the Tehsil Municipal Administration is responsible.

b) Exercise control over land-use, land-subdivision, land development and zoning by public and private sectors for any purposes, including for agriculture, industry, commerce market, shopping and other employment centers, residential, recreation, parks, entertainment, passenger and transport freight and transit stations.

c) Enforce all municipal laws, rules and by-laws governing its functioning.

a. Provided that TMA may, with the approval of Tehsil Council, exempt any Union from application of any specific provision of the by-laws made by the Tehsil Council.

b. Provided that the Government may, on the recommendations of TMA through District Government, exempt any Union or a part thereof from the application of rules relating to land use, building control, tax on property or in any other matter dealing with municipal services.

⁵ <http://www.tmafatehjang.com/Functions.html>

c. Provided also that such exemption shall not extend to any organized housing schemes, zoning of industrial and commercial areas and matters concerning environmental protection.

4. ANALYSIS:

4.1 Before going to analyze the conduct of the undertaking it is important to examine the issues in question:

- (i) Whether the undertaking is disseminating false/misleading information to the consumers that is lacking a reasonable basis, related to character, properties, suitability or quality of project in violation of Section 10(2)(b) of the Act?
- (ii) Whether the conduct of the undertaking is capable of harming the business interest of other undertakings in violation of Section 10(2)(a) of the Act?

(i) Whether the undertaking is disseminating false/misleading information to the consumers that is lacking a reasonable basis, related to character, properties, suitability or quality of project in violation of Section 10(2)(b) of the Act?

4.2 After detailed assessment of all the facts, the enquiry committee has analyzed the matter in different segments which includes but not limit to:

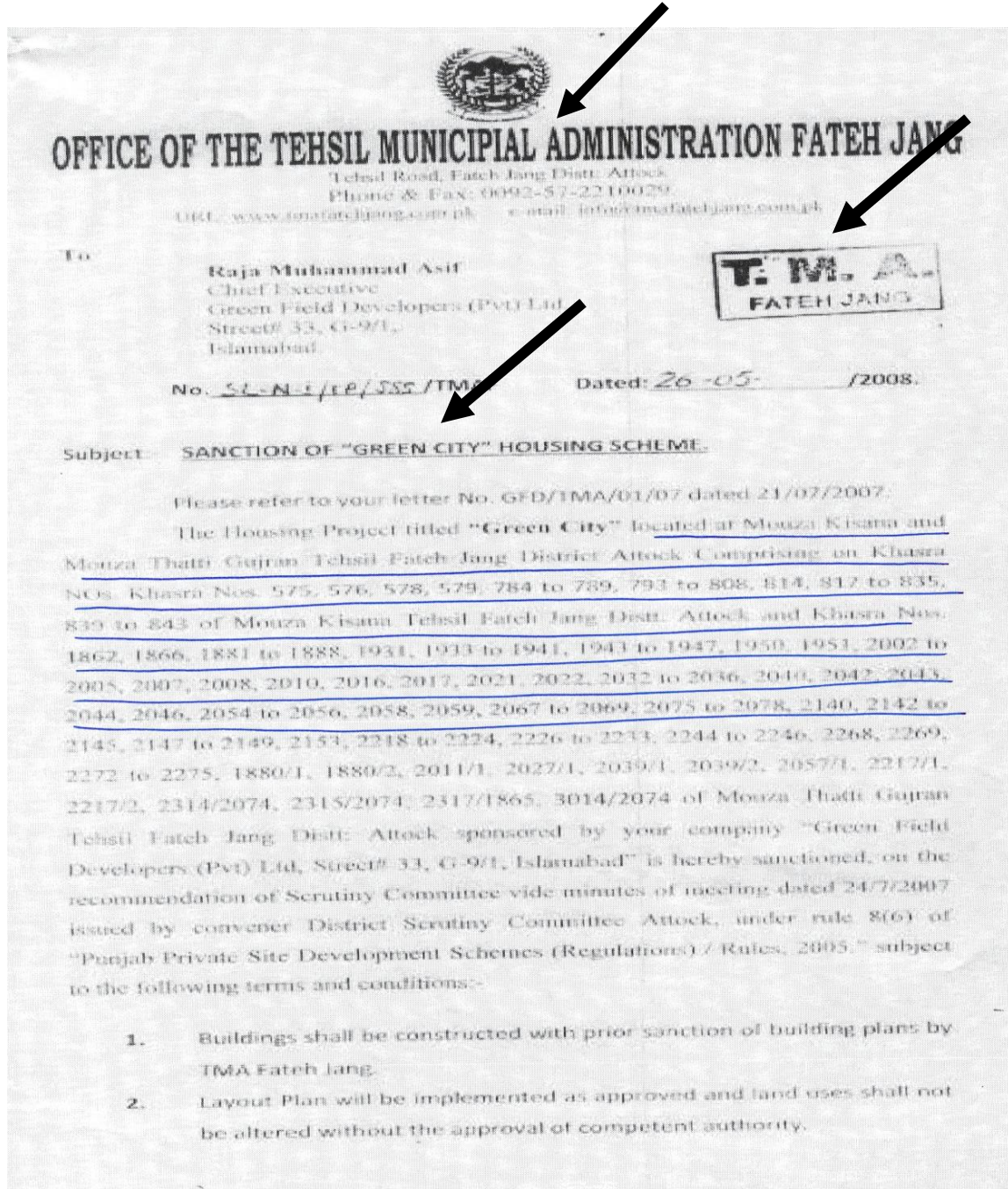
- a. NOC examination
- b. Physical inspection
- c. Advertising/ Promotional material verification

a. NOC EXAMINATION:

4.3 As the undertaking was using the name of Islamabad in all of their promotional material, it was therefore important to be clear about the location of the project. After going through the bylaws of CDA it is evident that a housing scheme situated in any zone of ICT can use the name of Islamabad after getting an approval from CDA. Details of housing scheme approved by CDA was also checked by the enquiry committee and it has been observed that the name of Green City was not available in the list of housing projects approved by CDA⁶. It is pertinent to mention here that the NOC of Green City which is available on the website of the undertaking reveals that it has been taken from Tehsil Municipal Administration (T.M.A) Fateh Jang (Annex-A). The relevant portion of the NOC is reproduced below:

⁶ <http://www.cda.gov.pk/housing/>

IMAGE:3



4.4 It has been observed that the said NOC has been issued to the housing project titled '**Green City**' (**without using the name of Islamabad**) located at Moaza Kisana and Moaza Thatti Gujran, Tehsil Fateh Jang, District Attock, comprises of certain khasra numbers. The NOC clearly reveals that the project of the undertaking is situated in Fateh Jang and the sanction **has been granted to the name of Green City only**. The use of word Islamabad is an addition made by the undertaking that may mislead the customers to believe that the project is situated in ICT.

b. PHYSICAL INSPECTION:

- 4.5 However, in order to know the factual position the enquiry committee visited the project site situated in Fateh Jang. No development/ construction work was carried out practically by the undertaking at its site. The hoardings during the visit and the billboards on the project site reveals that the undertaking is instantly using the name of Islamabad to catch the attention of the customers.

BILLBOARD ON KASHMIR HIGHWAY (IMAGE:4)



- 4.6 After going through the NOC and physically visited the project site of the undertaking it becomes obvious that the project of Green City is situated in Fateh Jang but using the name of Capital City 'Islamabad' which is misleading and fraudulent and gives a wrong impression to the customer that the project is situated in Islamabad.
- 4.7 The enquiry committee further visited the head office of the undertaking, wherein it has been observed that the board on the office gate also contain the name of Islamabad with the project name that can easily catch the attention of the customers and make them believe that the project is situated in Islamabad.

c. **ADVERTISING/ PROMOTIONAL MATERIAL VERIFICATION:**

4.8 The promotional material collected from the head office further substantiated the fact that the undertaking is trying to increase the sale of the project by using the name of 'Islamabad' deceptively. The overview of the front page of the brochure is as under:

(IMAGE:5)



4.9 As already indicated in para 2.2 above, the undertaking is also using the names and logos of different government departments on the brochure as well as on the website under the head of certifications, which gives an impression that they have some affiliation with these government departments. The logos of the departments used by them includes Government of Pakistan, Securities and Exchange Commission of Pakistan, Government of Punjab, Civil Aviation Authority Pakistan, Environment Protection Department etc. However, when they were asked to provide their authorization for the use of these logos, they failed to submit a single reply in this connection.

DISCLOSURE ON BROCHURE (IMAGE:6)



DISCLOSURE ON WEBSITE (IMAGE:7)



- 4.10 Moreover, the web address of the undertaking 'www.greencityislamabad.com' itself gives a firm impression that the project of green city is situated in Islamabad⁷.
- 4.11 An application form and payment schedule for the booking of plots is also available on the website of the undertaking. On going through these documents it has been observed that the application form is headed with the title ***For Booking Of Plots In The Project 'Green City' Islamabad.*** The payment schedule reveals the same practice of using the name of Islamabad at the top of the page⁸. (Copy of the application form along with the payment schedule is attached as Annex-B)
- 4.12 The website and the brochure also indicates certain other claims like ***'Pakistan's First Solar Powered Housing Society'*** and ***Purified Filtered Water In Taps,*** for which no development has been seen on the site of the project. It is also important here to explore the maps of the project given on the website of the undertaking, in order to be clarified more about its location.

(IMAGE:8)



⁷ <http://greencityislamabad.com/>

⁸ http://greencityislamabad.com/pdf/Application_form.pdf

- 4.13 The placement of the project as given in the map further substantiate the fact that the project of Green City is located in Fateh Jang.
- 4.14 It is pertinent to mention here that the undertaking in its reply has confessed that the due to oversight/ misunderstanding the existing brochures were printed. However, it has been observed that the misleading marketing was not only conferred to the brochures only, such misleading information was provided in all other type marketing material including billboards, hoardings, website etc.
- 4.15 The undertaking in this way has disseminated false and misleading information to the consumers that lacks a reasonable basis, related to character, properties, suitability or quality of project in order to increase its sales which, *prima facie*, constitutes violation of Section 10 (1) in general and in particular Section 10 (2)(b) of the Act.

(ii) Whether the conduct of the undertaking is capable of harming the business interest of other undertakings in violation of Section 10(2)(a) of the Act?

- 4.16 As already concluded in paragraph (4.2) to (4.15) above, the deceptive marketing by the undertaking, *prima facie*, lacks reasonable basis. It needs to be appreciated that any undertaking by making any claim which is either false, misleading or lacking a reasonable basis would give the said undertaking a competitive edge over other undertakings and would ultimately result in higher degree of preference. At this point we must point out that Section 10(2)(a) of the Act does not lead to the conclusion that it applies only in cases where false and misleading information is made by one undertaking vis-à-vis another specific undertaking. It can be towards all the other competing undertakings.
- 4.17 The undertaking has used the name of 'Islamabad' and different government logos repetitively in all type of its promotional material, which ultimately induces its purchase over other similar projects available in Fateh Jang and hence gives a undue competitive advantage to the undertaking over all other similar undertakings doing business in Fateh Jang and Islamabad. Thus the act of the undertaking, *prima facie*, constitutes violation of Section 10 (1) in general and in particular Section 10 (2) (a) of the Act.

5. CONCLUSION:

- 5.1 Real estate, as a general term, describes the built environment, which plays a vital role in every aspect of the economy, society and environment. Businesses and society can't function without the services of commercial property, including the provision of offices, shops, factories, housing and many other forms of real estate. The commercial property sector delivers and manages the infrastructure needed for entrepreneurship to thrive⁹. The real estate market is the market that encompasses all transactions which involve dealings in rights or access to land and buildings.
- 5.2 A number of other sectors of the economy also have strong linkages with the real estate sector. These include the labor sector, the cement and brick manufacturing

⁹ http://www.epra.com/media/Real_estate_in_the_real_economy_-_Epra_INREV_report_1353577808132.PDF

industries, the utility sector, the household appliances and furniture industries. Real estate is perhaps the only sector which brings all these diverse actors together, and is, therefore, critical for the overall health of the nation, as it impacts the entire economy.

- 5.3 The real estate market forms the backbone of the urban economy being a fixed factor market, and is most important for a well functioning urban environment. Unfortunately, most cities in Pakistan suffer from land market distortions caused by the failure of long-term land development and planning policies, ill-maintained records, as well as price distortions created by a nexus of corrupt interests. The key to efficient real estate markets is in the easy and rapid availability of developed land. This means that there should be proper regulation in the urban periphery which facilitate and have sustainable plans for the long-term needs of urban residents. In Pakistan, as in most developing countries, the constraints to efficient land markets are more often political than technical.
- 5.4 The importance of the real estate sector as a catalyst for growth can be gauged from the fact that it is the second largest employer next only to agriculture. In Pakistan about 250 ancillary industries, such as cement, steel, brick, timber and building materials, are dependent on the real estate industry¹⁰. A unit increase in expenditure in this sector has a multiplier effect and the capacity to generate income as high as five times.
- 5.5 According to the head of research at BMA Capital, the asset market size in Pakistan is \$700 billion, and the highest share of that is in real estate. He estimates that if one million people are living in houses built on areas of 500 square yards for each house, the total value of those assets comes to around \$300 billion¹¹. Yet another plausible estimate could be in the range of \$200-400 billion, i.e. 1.5-3 times Pakistan's GDP.
- 5.6 Pakistan spends approximately \$5.2 billion on construction in a year. According to the Federal Bureau of Statistics, construction output accounts for 2% of GDP, with housing representing less than half that total. According to the World Bank, in most countries, real estate (including land) accounts for between half and three-quarters of national wealth¹².
- 5.7 Deception in the real estate sector can bring colossal loss to the sustainability of the economy and thus it should be stopped timely. Based on the information available on record, the undersigned enquiry committee has reached the following conclusion:
- 5.8 The undertaking is using the name of Capital City Islamabad in all of its promotional material, which gives a firm impression to the customers that the project is situated in Islamabad rather than in Fateh Jang. However, the undertaking failed to provide a reasonable basis of using the name of Islamabad in this regard. It has also been observed that various other claims as indicated in para 4.12 were made by the undertaking for which no development has made on the site of the project. The undertaking in its reply also confess that the brochures under consideration were published wrongly.

¹⁰ Focus group discussions

¹¹ <http://www.brecorder.com/>

¹² http://www.commerce.gov.pk/Downloads/Real_Estate_Study.pdf

- 5.9 Further to assure the credibility of the project, the undertaking is also using the logos of different government departments for which they never submitted any reply to the enquiry committee that confirm their authorization to use these government logos.
- 5.10 Thus the conduct of the undertaking is capable of harming the business interest of other entities in violation of Section 10 2(a) of the Act and the undertaking is also involved in disseminating misleading and false information to the consumers that lacks a reasonable basis, related to character, properties, suitability or quality of the project that prefer its purchase over other similar projects available in the market in violation of Section 10 2(b) of the Act.

6. RECOMMENDATION:

- 6.1 The deceptive marketing practices have a direct impact on the public at large. It is in the interest of the general public that the undertakings should be stopped to advertise their Products / Services in an unfair and misleading manner and be encouraged to resort to the advertising practices which are transparent and gives consumers/customers true and correct information. Therefore, it is recommended that in the interest of the public at large proceedings may be initiated against Green Field Developers (Pvt) Ltd under provisions of Section 30 of the Act for, *prima facie*, violation of Section 10 of the Act, in accordance with law.

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