

**BEFORE THE COMPETITION COMMISSION OF INDIA**  
**(AUTHORITY UNDER SECTION 171 of CENTRAL GOODS & SERVICES TAX ACT, 2017)**

I.O. No.	02/2023
Date of Institution	15.02.2023
Date of Order	31.07.2023

**In the matter of:**

Director General of Anti-Profitteering, Central Board of Indirect Taxes & Customs, 2<sup>nd</sup> Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.

Applicant

Versus

M/s Omkar Realtors and Developers Pvt. Ltd., Off Eastern Express Highway,  
Opp. Sion Chunnabhatti Signal, Sion (East), Mumbai – 400022.

Respondent

**Coram: -**

Mrs. Ravneet Kaur, Chairperson  
Mrs. Sangeeta Verma, Technical Member  
Sh. Bhagwant Singh Bishnoi, Member

**ORDER**

1. The present Report dated 15.02.2023, had been received from the Director General of Anti-Profitteering (DGAP) after a detailed investigation as per the directions passed under Rule 133(5) of the Central Goods and Service Tax

I.O. No. 02/2023  
M/s Omkar Realtors and Developers Pvt. Ltd.

Rules (CGST), Rules 2017 vide Order No. 51/2022 dated 29.07.2022 by the National Anti-Profitteering Authority (NAA) in respect of project "Crescent Bay" situated at Parel, Mumbai, of M/s Omkar Realtors and Developers Pvt. Ltd.(Respondent) and M/s L&T Parel Project LLP(Respondent).

2. The DGAP vide his Report dated 31.01.2023 has inter-alia submitted the following: -

- i) The Respondent is in the business of construction of residential and commercial apartments and undertakes development of slum rehabilitation projects. His Projects are Slum Rehabilitation Authority (SRA) Rehab Projects wherein there is redevelopment on slum land. The Respondent is required to construct buildings for providing free flats to existing slum dwellers and other buildings for the sale of flats to customers.
- ii) The DGAP informed that as per the Maharashtra RERA website the Respondent had total four construction projects registered with MRERA, having following details:

Sl. No.	Project Name	Promoter Name	RERA Registration No. & Date
1	OMKAR 1973 WORLI	Omkar Realtors and Developers Private Limited	P51900003316 09/09/2021
2	Om Gopal - Floor 3 to 9	Omkar Realtors and Developers Private Limited	P51900012360 18/05/2020
3	The Summit Business Bay Andheri	Omkar Realtors and Developers Private Limited	P51800008187 18/08/2017

I.O. No. 02/2023  
M/s Omkar Realtors and Developers Pvt. Ltd.

4	Sairaj Floor 1, 2 and 22	Omkar Realtors and Developers Private Limited	P51900006458 18/05/2020
---	-----------------------------	--	----------------------------

- iii) In case of the project "**Om Gopal – Floor 3 to 9**", the Respondent had stated that two floors were constructed during Service Tax Period and Occupation Certificate for the said floors was received prior to GST Regime and no further activity had taken place till date in the said project. The DGAP stated that the Respondent had not submitted any documents in support of his claim that no demands were raised during July 2017 to July 2022. The DGAP had sent letter to the jurisdiction Commissionerate to ascertain the Respondent's claim, however no reply been received from him.
- iv) The Project "**Sairaj Floor 1, 2 and 23**" was part of rehabilitation project, wherein Slum Dwellers were given alternate accommodation. Its FSI was utilized in "" Crescent Bay Project" which was owned and constructed by L&T. The DGAP stated that the Respondent had not submitted any documents in support of his claim that no demands were raised during July 2017 to July 2022. The DGAP had sent a letter to the jurisdiction Commissionerate to ascertain the Respondent's claim, however no reply been received.
- v) As regards the Project "**Omkar 1973 Worli**", the slum dwellers were permanently housed in Mahalaxmi Co-op. HSG Ltd. that could not be sold and Slum Rehabilitation Authority (SRA) allowed equivalent FSI in the sold building "**Omkar 1973 Worli**" which comprises of three towers

having total 483 units out of which 455 pertained to the Respondent and rest were allotted to the land owner. The Respondent submitted copies of Occupancy Certificates issued by the SRA. In the project, the Respondent had entered into JDA with 3 land owners: 1) M/s Kash Foods Pvt. Ltd, 2) Mr Varun Ravi Arya 3) Mr. Nakul Ravi Arya.

- vi) The DGAP stated that out of 455 units the Respondent has benefited from additional ITC of 7.36% of the turnover which amounts to Rs. 9,52,76,540/- (inclusive of GST @12% on the base amount of Rs. 8,50,68,339/-) with respect to 40 flats, since consideration was received for them during the period of investigation i.e. 01.07.2017 to 31.07.2022. The DGAP has calculated no profiteering in respect of 201 units, since no consideration was received during the period of investigation. Further, 130 units were sold post-OC, 78 units remained unsold and 06 units booking was cancelled. Further, in the case of 02 units sold by Sh. Nakul Ravi Arya profiteering could not be calculated by the DGAP as complete information/documents were not provided. The DGAP informed that a letter has been written to the jurisdictional Commissionerate to verify the claim and to inquire into the tax liability involved in the sale of flats, but no reply was received.
- vii) As regards the Project "**The Summit Business Bay Andheri**", the slum dwellers were permanently housed in Prakshwadi CHS Ltd. that could not be sold and SRA allowed equivalent FSI in the sold building

**“The Summit Business Bay Andheri”**, which comprised of 342 units.

The Respondent had received OC for the project.

- viii) Out of 342 units of the above project the DGAP stated that the Respondent has benefited from additional ITC of 2.40% of the turnover which amounts to Rs. 3,04,60,309/- (inclusive of GST @12% on the base amount of Rs. 2,71,96,704/-) with respect to 86 flats, since the consideration for these flats was received during the period of investigation i.e 01.07.2017 to 31.07.2022. The DGAP stated that since no consideration was received for 202 units during the period of investigation, no profiteering was calculated. Further, 51 units were sold post OC and 03 units were unsold.
- ix) The DGAP stated that the Respondent's claim of passing benefit of Rs. 29.58 lakhs to 27 customers in the project could not be verified as the Respondent did not provide supporting documents.
- x) The DGAP concluded that **the Respondent was required to pass on the additional benefit of ITC of Rs. 9,52,76,540/- to 40 eligible recipients in the “Omkar 1973 Worli” project and Rs. 3,04,60,309/- to 86 eligible recipients in the “The Summit Business Bay Andheri” project.** Therefore, Section 171 of the Central Goods and Services Tax Act, 2017 has been contravened by the Respondent.
- xi) The Respondent has supplied construction services in the State of Maharashtra only. The present investigation covered the period from 01.07.2017 to 31.07.2022.

3. The Commission had carefully considered the Report of the DGAP and the other material placed on record and found that the DGAP has reported profiteering of Rs 9,52,76,540/- in respect of 'Omkar 1973 Worli' project and Rs. 3,04,60,309/- in respect of "The Summit Business Bay Andheri" project.
4. The Commission has also found that the report dated 15.02.2023 of the DGAP is silent on the aspect of profiteering, if any, by the Respondent in his Projects 'Om Gopal-Floor 3 to 9' and 'Sairaj Floor 1,2 and 22' and no investigation has been done in terms of Section 171 of the CGST Act, 2017 and the Rules made thereunder on the grounds that the Respondent had not submitted any document which could confirm that no demands were raised by the Respondent in respect of these projects during the period from July 2017 to July 2022. The DGAP has apparently not made any serious efforts to gather the relevant information on this account by exhausting all the available resources as prescribed under the CGST Act, 2017 and Rule 132 of the CGST Rules, 2017. He has also not tried to get relevant information from the concerned Jurisdictional Commissioner.
5. In view of above, the DGAP report dated 15.02.2023 in respect of both the above projects is incomplete. Accordingly, the DGAP is directed to further investigate both the above projects viz 'Om Gopal-Floor 3 to 9' and 'Sairaj Floor 1, 2 and 22' and submit his report accordingly.

6. A copy of this order be supplied to all the parties free of cost and file be consigned after completion.

Sd/-

(Ravneet Kaur)  
Chairperson

Sd/-

(Bhagwant Singh Bishnoi)  
Member

Sd/-

(Sangeeta Verma)  
Member

Certified Copy



(Jyoti Jindgar Bhanot)  
Secretary, CCI

F. No. M/AP/14/Omkar-OP/2023-Sectt./342-344

Dated: 31/07/2023

Copy To:-

1. M/s Omkar Realtors and Developers Pvt. Ltd., Off Eastern Express Highway, Opp. Sion Chunnabhatti Signal, Sion (East), Mumbai – 400022
2. Directorate General of Anti-Profiteering, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, New Delhi-110001.
3. Guard File.

I.O. No. 02/2023  
M/s Omkar Realtors and Developers Pvt. Ltd.