



BEFORE THE COMPETITION COMMISSION OF INDIA

(AUTHORITY UNDER SECTION 171 OF THE CENTRAL GOODS & SERVICES TAX ACT, 2017)

I. O. No. : 04/2023
Date of Institution : 22.12.2021
Date of Order : 31.07.2023

In the matter of:

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

Applicant

Versus

M/s Ireo Waterfront Pvt. Ltd., C-4, 1st Floor Malviya Nagar, New Delhi - 110017.

Respondent

Coram:-

1. Smt. Ravneet Kaur, Chairperson
2. Dr. Sangeeta Verma, Member
3. Sh. Bhagwant Singh Bishnoi, Member

ORDER

1. The Director General of Anti-profiteering (DGAP) submitted an Investigation Report dated 15.12.2021 under Rule 129 (6) of the CGST Rules, 2017 before the erstwhile National Anti-Profiteering Authority (NAA), after a detailed investigation as per the directions passed under Rule 133(5) of the Central Goods and Service Tax (CGST) Rules, 2017 vide the NAA's I.O. No. 14/2019 dated 21.10.2019 in the case of M/s Ireo Grace Realtech Pvt. Ltd. (Respondent) in respect of Project "Corridor". Vide the above order the DGAP was directed to investigate all other projects under the Brand Name "Ireo" details of which have been listed in Table-A given below:-

Table-A

S.No.	Name of the Company	Name of the Project	Location
1	Ireo Pvt. Ltd.	Ireo Grand Arch	Gurugram, Haryana
2	Ireo Pvt. Ltd.	Ireo Uptown	Gurugram, Haryana
3	Ireo Pvt. Ltd.	Skyon	Gurugram, Haryana
4	Ireo Pvt. Ltd.	Ireo City Central	Gurugram, Haryana
5	Ireo Pvt. Ltd.	Managed Service Apartment	Gurugram, Haryana
6	Ireo Victory Valley Pvt. Ltd.	Victory Valley	Gurugram, Haryana
7	Ireo Waterfront Pvt. Ltd.	Ireo Waterfront	Ludhiana, Punjab
8	Puma Realtors Pvt. Ltd.	Ireo Rise	Mohali, Punjab
9	Ireo Pvt. Ltd.	Gurgaon Hills	Gurugram, Haryana
10	Ireo Residences Co. Pvt. Ltd.	Grand Hyatt Gurgaon Residences	Gurugram, Haryana

2. The DGAP in compliance of the NAA's direction passed under Rule 133(5) of the Rules took all the projects of the Respondent (under Brand name "Ireo") for investigation and found that the Occupancy Certificates (OC) in respect of the projects "Ireo Grand Arch" and "Ireo Uptown" at serial No.1 and 2 of the table given above have been issued in the pre-GST period itself, and hence the said two projects were out of the purview of the investigation. The investigation

Reports in respect of the projects "Gurgaon Hills" and "Grand Hyatt Gurgaon Residences" mentioned at serial No. 9 and 10 of the table above have already been submitted to the NAA. Accordingly, the NOI had been issued by the DGAP on 15.01.2021 to look into to the aspect of violation of provisions of Section 171 of the Act for the remaining six projects.

3. Accordingly, The DGAP has collected evidence necessary to determine whether the benefit of ITC has been passed on in terms of Section 171 of the CGST Act, 2017 to the recipients in respect of construction service supplied for the following projects:-
 - a. M/s Ireo Pvt. Ltd., Project "Skyon", "Ireo City Central" and "Managed Service Apartment".
 - b. M/s Ireo Victory Valley Pvt. Ltd project "Victory Valley".
 - c. M/s Ireo Waterfront Pvt. Ltd., project "Ireo Waterfront".
 - d. M/s Puma Realtors Pvt. Ltd., project "Ireo Rise".
4. The present report is only in respect of the M/s Ireo Waterfront Pvt. Ltd. for his project "Ireo Waterfront" consisting of "Waterfront Plots" "Waterfront Floors" & "Waterfront Villas". The period covered by current investigation is from 01.07.2017 to 31.12.2020.
5. The DGAP has reported that the Respondent vide his submissions dated 28.01.2021 informed that M/s. Ireo Waterfront Pvt. Ltd. was a private limited company registered under the provisions of Companies Act, 1956 on 13.02.2006 in the name of VAR Realtors Pvt. Ltd. but subsequently w.e.f 08.06.2010 name of the company was changed to M/s. Ireo Waterfront Pvt. Ltd. Further, the Respondent vide his submission dated 29.11.2021, informed that *"all the land parcels that were obtained in Ireo Waterfront project were purchased in the name of the company- Ireo Waterfront Pvt. Ltd. (formerly known as Var Realtors Pvt. Ltd.). There had been no joint development*

agreement of M/s. Ireo Waterfront Pvt. Ltd. with any company and it owned and operated the project in its own capacity". The Respondent further submitted sample copies of land purchase deeds and copy of minutes of meeting held on 03.06.2010 resolving the change of name of the company from "VAR Realtors Private Limited" to "Ireo Waterfront Private Limited".

6. The Respondent vide his email dated 29.11.2021 has informed that he had made a declaration as required under Notification No. 03/2019 Central Tax (rate) dated 29.03.2019 for availing GST input and discharging the Output liability at applicable rates and not as per the abated rates, however, the Respondent did not submit a copy of the same. Since the Respondent has stated that he has opted for payment of GST availing the ITC as envisaged under Notification No. 3/2019- Central Tax (Rate) and as it was clear from the GSTR-3B Returns that the Respondent has continued to avail and utilize the ITC from 01.04.2019 also, the period for current investigation had been considered as proposed in the NOI i.e. from 01.07.2017 to 31.12.2020.
7. In response to the Notice dated 15.01.2021, various reminders & summons dated 18.11.2021, the Respondent submitted his replies vide letters/emails dated 28.01.2021 , 06.10.2021, 28.10.2021, 03.11.2021, 05.11.2021, 08.11.2021, 11.11.2021, 12.11.2021, 29.11.2021, 30.11.2021, 01.12.2021, 11.12.2021, 13.12.2021.
8. The DGAP has noticed that the Respondent had started to develop "Waterfront Luxury Villas", "Park Estate", "Oyster Floors", "Coral Floors", "Waterfront Plots" & Waterfront City Central" out of the approved layout, and started selling units in Projects "Waterfront Plots" "Waterfront Villas" and "Waterfront Floors". The projects which had been launched but not sold were Institutional, Group

Housing, EWS, Commercial and Commercial Shops. The Respondent has further submitted that the unit categories "Group Housing", "Institutional" & "SCO" were actually sold as plots under the layout area and that no Construction activity was done on these. Accordingly, unit categories "Waterfront Plots", "Waterfront Villas" and "Waterfront Floors" of the project "Ireo Waterfront" of the Respondent had been considered during the present investigation. Since no ITC was available to the Respondent with respect to the unit category "Waterfront Plots" as the sale of plots did not attract GST, the computation of profiteering has been restricted to the unit categories "Waterfront Floors" and "Waterfront Villas" of the Respondent's project "Ireo Waterfront" only. Summary of the sold-unsold units with respect to the projects has been submitted by the Respondent which has been given below:-

Table-B

Unit Category	Unsold Units	Sold Units	Total Units
PLOT	690	943	1,633
VILLA	9	110	119
IND. FLOOR	47	115	162
IND. FLOOR SITE	1	1	2
CLUB	1	0	1
COMMERCIAL	7	0	7
COMMUNITY CENTER-1	1	0	1
GROUP HOUSING	5	1	6
INSTITUTIONAL	16	2	18
SCO	14	8	22
Grand Total	791	1,180	1,971

9. The Respondent has informed that the copies of OC were not available with him and he had submitted the date of receipt of OCs in MS excel sheet with respect to certain units of unit categories "Waterfront Floors" & "Waterfront Villas". The Respondent has informed about the date of receipt of OCs in respect of 27

floors and 91 Villas, however, he did not submit any documentary evidence for the same. Further, since the OCs received with respect to the Floors & Villas were unit wise and the complete OC was yet to be received for the above project and unit wise CENVAT credit/ITC was not available separately, the investigation had been carried out till 31.12.2020 as proposed in the NOI. Hence, 115 sold units of the unit category "Waterfront Floors" & 110 sold units of the unit category "Waterfront Villas" had been considered for computation of profiteering.

10. The Respondent had submitted the home buyers lists in respect of sold units of the above said unit categories. The DGAP has observed from the sold-unsold details that the total saleable area of the unit category "Waterfront Floors" was 1,76,427 sq. ft. and of the unit category "Waterfront Villas" was 4,20,484 sq. ft. Since both the unit categories "Waterfront Floors" & "Waterfront Villas" pertained to the project "Ireo Waterfront", turnover, saleable area and sold area with respect to them had been combined for the purpose of computation of Profiteering which has been given as below:-

Table-C

(Amount in Rs.)

S. N.	Unit Category	Saleable area (sq.ft.)	Sold area in the pre-GST period (sq.ft.)	Turnover in the pre-GST period	Sold area In the post-GST period (sq.ft.)	Turnover in the post GST period
1	Waterfront Floors	1,76,427	10635	1,00,71,682	5345	267856
2	Waterfront Villas	4,20,484	74350	13,20,66,427	22944	1,40,16,501
Total		5,96,911	84,985	14,21,38,109	28289	1,42,84,357

11. The DGAP has further reported that the Respondent has provided the details of turnover and CENVAT credit /ITC availed by him as mandated under erstwhile

CENVAT Credit Rules 2004, present CGST Rules 2017 & RERA regulations. The said details of turnover and CENVAT/ITC available were in respect of the unit categories "Waterfront Floors" & "Waterfront Villas" only of his project "Ireo Waterfront" since no CENVAT/ITC was available with respect to other unit categories.

12. The DGAP has stated that the ITC of GST claimed by the Respondent for the period from July, 2017 to December, 2020 did not match with the credit available in his GSTR-3B Returns. Accordingly, the ITC of GST available for the above period was taken from the GSTR-3B Returns deducting the reversals made by the Respondent during the period. The amount of ITC claimed by the Respondent and the amount of ITC considered by DGAP for computation of profiteering for the period from July, 2017 to December, 2020 has been given as below:-

Table-D

(Amount in Rs.)

Sl. No.	Period	Statute	Input Tax Credit (ITC) claimed by the Respondent	ITC available	ITC reversed	ITC considered by the DGAP for computation of profiteering
1	July, 2017 to March, 2018	GST	43,798/-	24,04,946/-	22,25,494/-	1,79,452/-
2	April, 2018 to March, 2019	GST	-15,68,358/-	12,61,644/-	31,76,841/-	-19,15,197/-
3	April, 2019 to March, 2020	GST	24,82,604/-	98,87,738/-	74,05,134/-	24,82,604/-
4	April, 2020 to December, 2020	GST	1,93,186/-	6,93,056/-	4,99,870/-	1,93,186/-
Total			11,51,230/-			9,40,045/-

13. The DGAP has averred that the credit on input services was admissible to the Respondent under Rule 2(l) of the Cenvat Credit Rules 2004, which was utilized

by him to pay Service Tax. The Respondent did not submit the copies of VAT Returns for the period from April, 2016 to June, 2017 and had also not claimed the ITC of VAT. The DGAP has observed from the copy of VAT Returns received from the jurisdictional GST authority that no ITC of VAT was available to the Respondent. Therefore, 'NIL' ITC of VAT has been considered by the DGAP for computation of profiteering.

14. The DGAP has observed from the ST-3 Returns for the period that the Respondent had availed CENVAT credit of Service Tax paid on input services of Rs. 17,35,876/- for the period from 01.04.2016 to 30.09.2016, Rs. 39,68,022/- for the period from 01.10.2016 to 31.03.2017 and Rs. 48,10,175/- for the period from 01.04.2017 to 30.06.2017. The Respondent has claimed that he had reversed the CENVAT credit of Service Tax paid on input services of Rs. 43,29,956/- which was related to unsold units for which OC was received till 30.06.2017 and reflected in his Return for the period from 01.04.2017 to 30.06.2017. Accordingly, after deducting the reversal of Credit for the unsold units of Rs. 43,29,956/-, the net credit availed for the period from 01.04.2017 to 30.06.2017 was Rs. 4,80,219/-. The Respondent has submitted that he had availed credit of Rs. 55,46,398/- for the period from 01.04.2016 to 31.03.2017 and Rs. 3,54,149/- for the period from 01.04.2017 to 30.06.2017. Accordingly, the CENVAT credit of service tax paid on input services of Rs. 55,46,398/- for the period from 01.04.2016 to 31.03.2017 and Rs. 3,54,149/- for the period 01.04.2017 to 30.06.2017 as submitted by the Respondent had been considered for the purpose of computation of profiteering.

15. The DGAP has observed that prior to 01.07.2017, i.e., before GST was introduced, the Respondent was eligible to avail CENVAT credit of Service Tax paid on the input services but no ITC of VAT was available to him since the Respondent was under the composition scheme of VAT. Further, CENVAT credit of Central Excise Duty paid on the inputs was also not admissible as per the CENVAT Credit Rules, 2004, which were in force at the material time. However, post-GST, the Respondent could avail the ITC of GST paid on all the inputs and input services. From the information/documents submitted by the Respondent for the period from April, 2016 to December, 2020, the details of the ITC availed by him, his turnover from the project "Ireo Waterfront", the ratios of ITCs to the turnovers, during the pre-GST (April, 2016 to June, 2017) and post-GST (July, 2017 to December, 2020) periods were calculated and are furnished in Table below:-

		Table-E		(Amount in Rs.)
S. N.	Particulars	Total (Pre-GST)(April, 2016- June, 2017)	Total (Post-GST)(July, 2017- December, 2020)	
1	CENVAT of Service Tax Paid on Input Services used for flats (A)	59,00,547/-	-	
2	Input Tax Credit of VAT Paid on Purchase of Inputs (B)	-	-	
3	Input Tax Credit of GST Availed (C)	-	9,40,045/-	
4	Total CENVAT/Input Tax Credit Available (D)	59,00,547/-	9,40,045/-	
5	Turnover for Flats as per Home Buyers List (E)	14,21,38,109/-	1,42,84,357/-	
6	Total Saleable Area (in SQF) (F)	5,96,911	5,96,911	
7	Total Sold Area (in SQF) relevant to turnover (G)	84985	28289	
8	Relevant ITC [(H)= (D)*(G)/(F)]	8,40,088	44,551	
9	Ratio of ITC Post-GST [(I)=(H)/(E)*100]	0.59%	0.31%	

The DGAP has stated that the above calculation was based on the homebuyers demand data submitted by the Respondent vide his email dated 13.12.2021 for the unit categories "Waterfront Villas" & "Waterfront Floors" of the project "Ireo Waterfront".

16. The DGAP has claimed from the above Table and the facts stated supra that the ITC as a percentage of the turnover which was available to the Respondent for his project "Ireo Waterfront" during the pre-GST period (April, 2016 to June, 2017) was 0.59% and during the post-GST period (July, 2017 to December, 2020), it was 0.31% which confirmed that post-GST, the Respondent had not benefitted from additional ITC in respect of the project "Ireo Waterfront".
17. The DGAP has further noticed from the homebuyers' list that out of the 115 sold units of the unit category "Waterfront Floors", the demands had been raised and advances received from 4 homebuyers only in the post-GST period. Similarly, out of the 110 sold units of the unit category "Waterfront Villas", the demands had been raised and advances received from 4 homebuyers only in the post-GST period.
18. Consequently, the DGAP has concluded that post-GST, no benefit of additional ITC has accrued to the Respondent in respect of the project "Ireo Waterfront" and hence Section 171 of the CGST Act, 2017 has not been contravened by the Respondent in as much as no benefit of additional ITC on the demands raised by the Respondent during the post-GST period from 01.07.2017 to 31.12.2020 in respect of unit categories "Waterfront Floors" & "Waterfront Villas" of the project "Ireo Waterfront", has accrued to him.
19. The DGAP has also claimed that the present investigation covered the period from 01.07.2017 to 31.12.2020. Profiteering, if any, for the period post

December, 2020 in respect of the project "Ireo Waterfront", has not been examined as the exact quantum of ITC that would be available to the Respondent in future cannot be determined at this stage, when the construction of the project was yet to be completed. Further, In respect of the units/home buyers in whose case agreement had been made prior to the receipt of OC and where balance amount was yet to be demanded, the Respondent had to workout the element of profiteering on similar lines as discussed/calculated above and to pass on the benefit of ITC to the respective home buyers.

20. This Commission has carefully considered the Report dated 15.12.2021 of the DGAP and the case records and the following issues are required to be settled in the present proceedings:-

- I. Whether there is benefit of additional ITC available to the Respondent which has not been passed on by him to the Applicant?
- II. Whether there was any violation of the provisions of Section 171 (1) of the CGST Act, 2017 by the Respondent?

21. This Commission finds that the Respondent is a construction service provider. The Respondent had got approval for development of various unit categories viz. "Waterfront Luxury Villas", "Park Estate", "Oyster Floors", "Coral Floors", "Waterfront Plots" & "Waterfront City Central" under the project "Ireo Water Front". Out of the approved layouts only 3 unit categories had been sold i.e "Waterfront Plots", "Waterfront Villas" & "Waterfront Floors" and the other categories like institutional, Group Housing, EWS, Commercial and Commercial Shops were not sold. Further, since no ITC was available to the Respondent with respect to the unit category "Waterfront Plots" as the sale of plots did not attract GST. The profiteering pertaining only to sold categories has been

examined by the DGAP. Based on the figures of turnover and ITC for the pre GST and post GST period it is also clear that ITC as a percentage of the turnover which was available to the Respondent for the project "Ireo Waterfront" during the pre-GST period (April, 2016 to June, 2017) was 0.59% and during the post-GST period (July, 2017 to December, 2020), it was 0.31% which indicates that post-GST, the Respondent has not benefitted from additional ITC in respect of the project "Ireo Waterfront".

22. However, the DGAP has mentioned that the present investigation covered the period from 01.07.2017 to 31.12.2020. Profiteering, if any, for the period post December, 2020 in respect of the project "Ireo Waterfront", has not been examined as the exact quantum of ITC that would be available to the Respondent in future could not be determined at this stage, when the construction of the project was yet to be completed. The DGAP has also stated that it is clear from the homebuyers' list that out of the 115 sold units of the unit category "Waterfront Floors", the demands have been raised and advances received in the post GST period from 4 homebuyers only. Similarly, out of the 110 sold units of the unit category "Waterfront Villas", the demands have been raised and advances received in the post GST period from 4 homebuyers only, which requires further investigation. Moreover, the Respondent has received partial OCs in respect of the Project "Ireo Waterfront" but no completion certificate has been received till date. Therefore, the Commission is of the view that the investigation conducted by the DGAP is not complete. Therefore, the Commission directs the DGAP to further investigate the project after 31.12.2020 till the complete Occupation Certificates are obtained by him under Rule 133(4) of the CGST Rules, 2017.

23. The Respondent is also directed to extend all necessary assistance to the DGAP and furnish him with necessary documents or information as required during the course of the investigation.

24. Further, the Jurisdictional Commissioners CGST/SGST are also directed to assist the DGAP in the matter to conclude his investigation.

25. A copy of this order be supplied to all the parties free of cost and file of the case 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. 22011/NAA/Ireo Waterfront/74/2022 | 451-453 Date: 01.08.2023

Copy to:-

1. M/s Ireo Waterfront Pvt. Ltd., C-4, 1st Floor Malviya Nagar, New Delhi, 110017.
2. Directorate General of Anti-Profitteering, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, New Delhi-110001.
3. Guard File.