



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

I. O. No. : 09/2023
Date of Institution : 15.03.2023
Date of Order : 17.08.2023

In the matter of:

1. Sumit Mansingka, 404, Prangan Tower, Ramprastha Greens, Sector-9, Vaishali, Ghaziabad-201010.
2. Director General of Anti-Profitteering, 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 E-Homes Infrastructure Pvt. Ltd., Dasnac Annexe-1, ECE House, 28A,
Kasturba Gandhi Marg, New Delhi-110001.

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 15.03.2023 under Rule 133(4) of the CGST Rules, 2017 and Report dated 30.12.2022 under Rule 133(2A) of the above Rules before the Commission, after a detailed investigation as per the directions passed under Rule 133(4) of the Central Goods and Service Tax (CGST) Rules, 2017 vide the NAA's I.O. No. 19/2022 dated 28.09.2022 in respect of Projects "The Jewels of Noida Phase-I" and "The Jewels of Noida Phase-II".
2. Vide the above order the DGAP was directed to re-investigate the project 'The Jewels of Noida Phase-I' and submit his report under Rule 133(2A) of the CGST Rules, 2017 on the following issues:-
 - a. The Authority found that ITC of VAT as much as is allowed vide the said VAT Assessment Orders for the period from April-2016 to June-2017 shall be incorporated into the computation of profiteered amount by the DGAP subject to verification of the authenticity of the same. The DGAP shall ascertain the authenticity of the VAT Assessment Orders submitted by the Respondent and if verified from the State GST Commissioner/UP VAT Department, the same shall be considered while computing the profiteered amount and thus, the profiteered amount shall be recalculated.

- b. The ITC that was reversed by the Respondent ought to be examined on merits and profiteering, if any, may be recalculated, if necessary, so that any reversal made on account of ineligible ITC on account of incorrect GSTIN details could be verified from DRC-03 challans.
3. In compliance to the above IO No. 19/2022, the DGAP has submitted its Report dated 30.12.2022 under Rule 133(2A) of the above Rules and has stated that:-
- a. In order to verify the authenticity of the VAT Assessment Orders for the period 2016-17 and 2017-18, the DGAP had sent letters dated 19.10.2022 and 03.11.2022 to the Commissioner, Commercial Tax, Lucknow, UP. In response, the Deputy Commissioner, Section-16, Ghaziabad vide letter dated 09.11.2022 has forwarded the authenticated VAT Assessment Orders for the above periods in respect of the Respondent.
- b. As per the above VAT Assessment Orders, it has been observed that the eligible ITC for the financial year 2016-17 was Rs. 2,45,78,903/- and for the financial year 2017-18 (April-2017 to June-2017) it was Rs. 65,70,034/-. Thus, the total eligible ITC of VAT paid comes to Rs. 3,11,48,937/- and thus, the figures for eligible ITC of VAT are revised and the same have been furnished by the DGAP in Table-A below:-

TABLE-A (The Jewels of Noida-I)			
Sr.No	Particulars	Total (Pre-GST) April, 2016 to June, 2017	Total (June, 2017 to December,2018)
1	CENVAT of Service Tax Paid on Input Services used for flats (A)	2,41,87,067	-
2	Input Tax Credit of VAT Paid on Purchase of Inputs (B)*	3,11,48,937*	-
3	Total CENVAT/Input Tax Credit Available (C)= (A+B)	5,53,36,004	-
4	Input Tax Credit of GST Availed (D)	-	2,71,85,969

5	Turnover for Flats as per Home Buyers List (E)	59,57,07,980	32,51,14,336**
6	Total Saleable Area (in SQF) (F)	8,60,178	8,60,178
7	Total Sold Area (in SQF) relevant to turnover (G)	3,40,150	5,18,940**
8	Relevant ITC [(H)= (C)*(G)/(F)]	2,18,82,147	1,64,01,125
Ratio of Input Tax Credit Post-GST [(I)=(H)/(E)]		3.67%	5.04%

* **Note:** As per authenticated VAT Assessment Orders

**The turnover and total sold area considered for those flats which are sold before receiving the Occupation certificate. The Respondent received the occupancy certificate in the month of 29.11.2017.

- c. From the revised Table-'A' above, it is clear that the input tax credit as a percentage of the turnover that was available to the Respondent during the pre-GST period (April, 2016 to June, 2017) was 3.67% and during the post- GST period (July, 2017 to December, 2018), it was 5.04%. This clearly confirms that in the post-GST, the Respondent has been benefited from additional input tax credit to the tune of 1.37% [5.04% (-) 3.67%] of the turnover.
- d. Accordingly, on the basis of the figures contained in revised Table- 'A' above, the comparative figures of the ratio of input tax credit availed/available to the turnover in the pre-GST and post-GST periods, the profiteered amount is tabulated in revised Table-'B' below:-

TABLE-B (The Jewels of Noida-I)			
Sr. No.	Particulars		
1	Period	A	July, 2017 to December,2018
2	Output GST rate (%)	B	12
3	Ratio of CENVAT credit/ Input Tax Credit to Total Turnover as per table - 'B' above (%)	C	5.04%/3.67%
4	Increase in input tax credit availed post-GST (%)	D= 5.04% less 3.67%	1.37%
5	Analysis of Increase in input tax credit:		
6	Base Price raised during July, 2017 to December, 2018 (Rs.)	E	32,51,14,336
7	GST raised over Base Price (Rs.)	F= E*B	3,90,13,720
8	Total Demand raised	G=E+F	36,41,28,056

9	Recalibrated Base Price	$H = E*(1-D)$ or 98.63% of E	32,06,60,270
10	GST @12%	$I = H * B$	3,84,79,232
11	Commensurate demand price	$J = H+I$	35,91,39,502
12	Excess Collection of Demand or Profiteering Amount	$K = G-J$	49,88,554

- e. From Table-‘B’ above, it is clear that the additional input tax credit of 1.37% for Project-1 of the total turnover should have resulted in the commensurate reduction in the base price as well as cum-tax price. Therefore, in terms of Section 171 of the Central Goods and Services Tax Act, 2017, the benefit of such additional input tax credit was required to be passed on to the recipients.
- f. It is evident from the above calculation explained in Table-B on the basis of the aforesaid CENVAT/input tax credit availability pre and post-GST and the details of the amount collected by the Respondent from the Homebuyers in respect of the flats sold by him during the period 01.07.2017 to 31.12.2018, the benefit of input tax credit that needs to be passed on by the Respondent to the buyers of flats comes to Rs. 49,88,554/- which includes 12% GST on the base amount of Rs. 44,54,066/- for the project “The Jewels of Noida-I”.
- g. As regards the observation made in Para-28 of the NAA I.O. No. 19/2022 dated 28.09.2022 regarding non-consideration of ITC reversal of GST amounting to Rs. 72,68,059/-, it has been clarified by the DGAP that claim of reversal of ITC as intimated in FORM GST DRC-03, made on account of Annual return/voluntarily for financial year July to March 2017-2018 and 2018-2019 was not considered as the Respondent has not submitted FORM GST DRC-04 (acknowledgement of acceptance of

payment made voluntarily under FORM GST DRC-03) issued by the Proper Officer to the extent of the amount paid and the reasons stated therein. Further, a letter dated 02.12.2022 was written to the Jurisdiction Commissioner CGST, Ghaziabad, with a request to provide a copy of FORM GST DRC-04 so that the claim of the Respondent may be considered or otherwise. The reply in their regard is awaited.

- h. Thus, the DGAP has concluded that the additional input tax credit of 1.37% of the turnover should have resulted in the commensurate reduction in the base price as well as cum-tax price. Therefore, in terms of Section 171 of the CGST Act, 2017, the benefit of such additional input tax credit amounting to Rs. 49,88,554/- was required to be further passed on by the Respondent to the eligible recipients. These recipients are identifiable as per the documents provided by the Respondent, giving the names and addresses along with Unit No. allotted to such recipients. Therefore, this additional amount of Rs. 49,88,554/- is required to be returned to such eligible recipients.

4. Further, Vide the above Order the DGAP was also directed to re-investigate the project 'The Jewels of Noida Phase-II' and the relevant Para of the Order is reproduced below:-

"Para-30: - We note also that the Respondent has submitted that Project-2 i.e. Phase II was launched by them on 1-12-2017 i.e. after the introduction of the GST and that the final layout drawings for the said project 2 i.e. Phase II were approved by the Noida Authority on 5-11-2018 and also that the contract with M/s Modern Construction Company for construction of the said Project-2 i.e. Phase II was entered on 15-2-2019. In view of the above said facts, the Respondent

has claimed that provisions of Section 171 of the CGST Act, 2017 do not get attracted in respect of Project-2 i.e. Phase II. However, Respondent has also submitted that benefit of ITC has been passed on to 9 customers, who have booked flats on the basis of EOI/advances as well as other homebuyers in form of discounts. These two submissions of the Respondent, i.e. that Project-2/Phase II has started after 1-12-2017 and that the ITC benefit has been passed down to 9 customers who have booked the flats in pre-GST era, contradict each other. The Authority also finds from the Annexure-11 of the DGAP Report wherein the Respondent in his own submissions dated 08.10.2020 has admitted that some customers have booked flats in pre-GST period and those customers had also been allotted flats numbers viz. Bharat Chugh Flat No. F-602 allotted on 12.02.2017 and Sandhya Jain Flat No. F-802 allotted on 04.06.2017. It is not understood as to how the booking of flats could have been made before the launch of Project on 0-12-2017, that too in pre-GST era. These evidences submitted by the Respondent himself appear to indicate that the plan for construction and sale of units in the said Project-2/Phase II was in public domain during the pre-GST era and the prospective buyers have made bookings of the flat. The contention of the Respondent that the above said bookings were in response to EOI/Advance is not supported by any evidence/document and the said contention of the Respondent, prima-facie does not appear to be sustainable. It also appears that, the Respondent has paid Service Tax on the payments received, whether it be known as advance/EOI or by any other name, from such persons who have booked units in the said Project II/Phase II prior to 1.07.2017. This Authority finds that, the above contradictory submissions made by the Respondent vis a vis the facts on record require proper scrutiny so as to determine the true and correct nature of transactions relating to the said Project 2/Phase II. In the given facts and circumstance, the DGAP is directed to reinvestigate the said Project-2/Phase II as per the above said findings of the Authority after making appropriate enquiries, as deemed fit, relating to the units booked/transactions made in the pre-GST and GST periods

an submit a fresh report for the said Project-2/Phase II in terms of Rule 133(4) of the CGST Rules, 2017 separately.”

5. The DGAP in compliance of the NAA's direction passed vide I.O. No. 19/2022, has submitted Report dated 15.03.2023 under Rule 133(4) of the above Rules in respect of the project 'The Jewels of Noida Phase-II' and has stated that:-

- a. To verify the correctness of the statement of the Respondent with respect to RERA Registration claimed by the Respondent, the official website of Uttar Pradesh Real Estate Regulatory Authority was visited and it was observed that the project “**The Jewels of Noida (Phase-II)**” has been registered in the Name and address of M/s E-Homes Infrastructure Pvt Ltd, Dasnac Annexe-1, ECE House, 28A, Kasturba Gandhi Marg, New Delhi-110001. In the said RERA registration UPRERAPRJ4350 in the plan details the Respondent had received the Original Permit for the project “The Jewels of Noida (Phase-II) on 06.07.2016 which was valid upto 05.07.2021. Thus, it is evident from the said RERA registration that the Respondent had already taken approval for the said project in pre-GST regime and got it registered in RERA showing as on-going project. Further, he had also sold 11 units and had fixed the sale price of the said project before the introduction of GST. Therefore, the contention of the Respondent that the project “The Jewels of Noida (Phase-II)” was launched in post-GST is not sustainable
- b. The DGAP has also stated that the Respondent had received the RERA Registration, Details of Encumbrances, Commencement Certificate, Waste Disposal Plan, Water Supply Plan, Architect Certificate, Engineers

Certificate, work construction of the said project etc. after the introduction of GST, but he had already received the Permit work for the said project in pre-GST regime on 06.07.2016 which was evident from the RERA Registration. Further, as per the submissions filed by the Respondent it was found that he had booked 11 flats before introduction of the GST. Out of the said 11 flats he had received the consideration from 10 flat buyers and allotted the flat numbers to the said buyers. The Respondent had also charged Service Tax from the flat buyers and paid the Service Tax on the payment received from the buyers which was shown in the Respondent's Service Tax Return filed by him. Further the Respondent had also submitted that he had issued credits notes to 9 customers who had paid advances prior to 01.07.2017 and had claimed that he had passed on benefit of Rs 41,17,470/- to these 9 customers. Further, the Respondent had not provided e-mail ids and contact details of homebuyers to whom he had claimed to have passed on the benefit of Input Tax Credit. Therefore, the claim of the Respondent of having passed on the benefit in respect of 9 homebuyers could not be verified. Hence, it was evident from above that he had received the work permit, booked the flats and also received the consideration amount from the said buyers before the introduction of GST.

- c. Hence, the DGAP has concluded that the project "The Jewels of Noida (Phase-II)" was launched and started in Pre-GST era and was got registered in RERA as on-going project in Post-GST regime. Further the Respondent had also booked Flats and received advances/raised bills on the homebuyers in pre-GST regime. Therefore, there was no change in

the amount of profiteering for the project "The Jewels of Noida (Phase-II)" of Rs. 2,22,46,713/- as arrived in DGAP's Investigation Report dated 27.11.2020.

6. This Commission has carefully considered the DGAP's Reports dated 30.12.2022 & 15.03.2023 and the documents/information placed on record. The Commission finds that the erstwhile Authority had passed I.O. No. 19/2022 and directed the DGAP to reinvestigate the project i.e. 'The Jewels of Noida Phase-I' and submit its report (a) after verification of the authenticity of VAT Assessment Orders for the financial year 2016-17 and 2017-18 and considering the Credit of VAT and (b) considering the reversal of ITC made on account of ineligible ITC on account of incorrect GSTIN details. The DGAP, for the purpose of calculation of profited amount has considered the Credit of VAT amounting to Rs. 3,11,48,937/- and thus, has arrived at profited amount of Rs. 49,88,554/-. However, on the issue of reversal of ITC made by the Respondent, the DGAP has reported that claim of reversal of ITC as intimated in FORM GST DRC-03, made on account of Annual return/voluntarily for financial year July to March 2017-2018 and 2018-2019 was not considered as the Respondent has not submitted FORM GST DRC-04 (acknowledgement of acceptance of payment made voluntarily under FORM GST DRC-03) issued by the Proper Officer to the extent of the amount paid. A letter dated 02.12.2022 was written by the DGAP to the Jurisdictional Commissioner CGST, Ghaziabad, with the request to provide a copy of FORM GST DRC-04 so that the claim of the Respondent could be verified. However, the reply of the Jurisdictional Commissioner was awaited.

7. The Commission finds that without proper verification of ITC reversed by the Respondent, the exact amount of profiteering cannot be determined. Hence, the Commission is of the view that profiteering should be calculated by verifying the reversal of ITC made by the Respondent. Moreover, the reply of the Jurisdictional Commissioner regarding form GST DRC-04 (acknowledgement of acceptance of payment made voluntarily under FORM GST DRC-03) is also awaited. Therefore, in the interest of justice, profiteering amount cannot be determined without knowing the fact whether the ITC reversed by the Respondent shall be excluded while calculating profiteering or not.
8. In view of the above discussion and findings, the Commission directs DGAP to obtain the reply of the Jurisdictional Commissioner regarding the reversal of ITC made by the Respondent and recalculate the profiteered amount, if required and submit report under Rule 133(4) of the CGST Act, 2017 in respect of the projects 'The Jewels of Noida Phase-I'.
9. Further, the DGAP vide its Report dated 15.03.2023 has submitted in respect of the project 'The Jewels of Noida Phase-II' that the Respondent had claimed that he had passed on the benefit of ITC amounting to Rs. 41,17,470/- to 09 customers, who had paid advances prior to 01.07.2017. However, the above claim of the Respondent could not be verified as the Respondent has not provided the E-mail ids and Contact details of the above customers.
10. Thus, the Commission is of the view that the claim of the Respondent regarding passing on the benefit of ITC to 09 customers needs to be verified by contacting the customers/home buyers and seeking their replies regarding receipt of benefit of ITC. Hence, the Commission under Rule 133(4) of the CGST Rules, 2017 directs the DGAP to verify the claim of the Respondent regarding passing

on the benefit of ITC to 09 customers and thus, recalculate the profiteered amount in respect of the project 'The Jewels of Noida Phase-II', if required.

11. 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.

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

13. 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/234/E-Homes Pt./2020 / 566-569

Date: 17.08.2023

Copy to:-

1. M/s E-Homes Infrastructure Pvt. Ltd., Dasnac Annexe-1, ECE House, 28A, Kasturba Gandhi Marg, New Delhi-110001.
2. Sh. Sumit Mansingka, 404, Prangan Tower, Ramprastha Greens, Sector-9, Vaishali, Ghaziabad-201010.
3. Directorate General of Anti-Profitteering, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, New Delhi-110001.
4. Guard File.