



**BEFORE THE COMPETITION COMMISSION OF INDIA**

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

I. O. No. : 10/2023  
Date of Institution : 26.06.2023  
Date of Order : 22.08.2023

**In the matter of:**

1. Shri Vinay Sheel Bansal & Shri Chander Sheel Bansal, 102, Ground Floor, Oakwood Apartments, Plot No. 29, 30 & 44, Phase-2, Nandagiri Hills, Jubilee Hills, Hyderabad- 500033.
2. 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.

**Applicants**

**Versus**

M/s Jaiprakash Associated Limited, Jaypee Greens, Sector- 128, Noida- 201 304 (UP).

**Respondent**

**Coram: -**

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

## ORDER

1. The present Report dated 23.06.2023 has been received from the Applicant No. 2 i.e. the Director-General of Anti-Profiteering (DGAP) after a detailed investigation under Rule 129 (6) of the Central Goods & Service Tax (CGST) Rules, 2017. A reference was received from the Standing Committee on Anti-profiteering by the DGAP to conduct a detailed investigation in respect of an Application filed under Rule 128 of the CGST Rules, 2017, by Applicants No. 1 alleging profiteering in respect of Construction Service supplied by the Respondent. The above Applicants alleged that the Respondent had not passed on the benefit of ITC to them by way of commensurate reduction in the price of the flat purchased from the Respondent in the project “**Jaypee Greens Kalypso Court**” situated at Jaypee Greens, Noida on the introduction of GST w.e.f. 01.07.2017, in terms of Section 171 of the CGST Act, 2017.
2. The DGAP vide his Report dated 23.06.2023 has inter-alia submitted the following: -
  - i. The Applicants alleged that the Respondent had not passed on the benefit of ITC to them by way of commensurate reduction in the price on the purchase of a Flat No. K11-2103 in the Respondent's project “**Jaypee Greens Kalypso Court**”, situated at Jaypee Greens, Noida on the introduction of GST w.e.f. 01.07.2017, in terms of Section 171 of the CGST Act, 2017.

- ii. On receipt of the reference from the Standing Committee on Anti-profiteering, a Notice under Rule 129 of the Rules was issued by the Director General of Anti-profiteering on 19.10.2022, calling upon the Respondent to reply as to whether he admitted that the benefit of ITC had not been passed on to his customers by way of commensurate reduction in prices and if so, to suo moto determine the quantum thereof and indicate the same in his reply to the Notice as well as furnish all supporting documents.
- iii. The period covered by the current investigation was from 01.07.2017 to 30.09.2022.
- iv. The Respondent in his reply to DGAP has stated that: -
  - (a) He had multi-division company which engaged in the business of manufacturing cement, hospitality, civil construction, and real estate. Before the advent of GST, the company had centralized service tax registration for all projects all over India.
  - (b) After the introduction of GST, the company obtained state-wise GST registration all over India. Accordingly, a common GST registration was obtained in the state of UP which covered works contracts, facility management, manpower supply, and real estate. In real estate, the Respondent was working as a works contractor for Jaypee

Infratech Limited beside real estate developer on his own account. Thus, his GST registration was a common registration for various works contract as well as real estate projects including the above project. Since there was a common GST registration hence there was no separate ITC maintained for the said project.

(c) All the Towers were launched together, and 5 to 6 major contractors were deployed for the construction of 15 towers of the said project. As and when the towers were complete at Occupancy Certificate (OC) level the Respondent started applying for OCs for the same. The Respondent applied OC for 7 Towers namely Kalypso Towers 1, 2, 3, 4, 14, 15 & 16 in the year 2013.

(d) Details of OCs received in Kalypso Project are as below:-

S. No.	Tower No	OC Receipt Date	Before / After RERA
1	KLP001	11-Dec-15	Before RERA
2	KLP002	11-Dec-15	Before RERA
3	KLP003	11-Dec-15	Before RERA
4	KLP004	11-Dec-15	Before RERA
5	KLP014	11-Dec-15	Before RERA
6	KLP015	11-Dec-15	Before RERA
7	KLP016	11-Dec-15	Before RERA
8	KLP005	4-May-18	After RERA
9	KLP006	4-May-18	After RERA
10	KLP009	12-Nov-18	After RERA
11	KLP010	12-Nov-18	After RERA
12	KLP007	01-Aug-22	After RERA
13	KLP008	01-Aug-22	After RERA
14	KLP011	16-Nov-22	After RERA
15	KLP012	16-Nov-22	After RERA

- (e) In respect of Tower 1, 2, 3, 4, 14, 15 & 16 the Respondent had submitted that the Occupancy Certificate was received on 11.12.2015 and the said 7 towers were completed on 11.12.2015, i.e., in the pre-GST period. The Respondent contended that Anti-profiteering provisions under Section 171 of CGST Act, 2017 were not applicable to these 7 towers. The Respondent alleged that Tower No. 13 never existed in the project and the remaining Towers i.e., Tower No. 5 to 12 (8 towers) were to be examined under provisions of Section 171 of CGST Act, 2017.
- v. The DGAP has submitted that after examining the available records and documents, the main issues for determination were:
- a. Whether there was the benefit of reduction in the rate of tax or ITC on the supply of construction service by the Respondent after implementation of GST w.e.f. 01.07.2017 and if so,
- b. Whether the Respondent has passed on such benefit to the recipients by way of commensurate reduction in prices, in terms of Section 171 of the CGST Act, 2017.
- vi. The DGAP has submitted in its report that there were 1107 Units in the project "Jaypee Greens Kalypso Court". Out of 1107 Units,

the Respondent had sold 1086 Units whereas 21 Units remained unsold. The DGAP also submitted that as per the homebuyer's list submitted by the Respondent, there were total 1040 units in the project and all had been sold. Out of these 503 units pertained to Tower No. 1 to 4 & Tower No. 14 to 16; and 537 units pertained to Tower No. 5 to 12 of the project "Jaypee Greens Kalypso Court"; further, 21 units in the said project had remained unsold. Therefore, the sum of 'units sold as per homebuyer list' and 'unsold 21 units' was 1061. The DGAP has also submitted that no data in respect of 46 units had been submitted by the Respondent despite seeking clarifications repeatedly. Therefore, the DGAP has reported that it has considered only 537 units as depicted in the homebuyers list pertaining to Tower No. 5-12 of the project, for the computation of profiteering.

- vii. The DGAP in its report has reported that Section 171(1) of the CGST Act, 2017, requiring that "*any reduction in rate of tax on any supply of goods or services or the benefit of ITC shall be passed on to the recipient by way of commensurate reduction in prices*", had been contravened by the Respondent in the present case. The DGAP has also reported that the benefit of additional ITC to the tune of 12.09% of the turnover has accrued to the Respondent during the period from 01.07.2017 to 30.09.2022 for passing on to the respective recipients. The DGAP submitted that the Respondent had realized an additional amount to the tune of Rs.

**4,26,534/-** from the Applicants and Rs. **14,65,30,712/-** from other recipients in the present project.

viii. The DGAP has also reported that as per the homebuyer list provided by the Respondent, there were 537 units in the Tower 5 to 12 of the said project; and out of 537 units, 20 units was booked after receipt of the Occupancy Certificate and thereby, in terms of clause (b) of paragraph 5 of Schedule-II of the Act, sale of these units was exempted supplies. The DGAP also reported that other 517 units were booked /sold before receipt of Occupancy Certificate and out of 517 units, in respect of 05 units, no demands were raised by the Respondent in the post-GST period. Accordingly, the DGAP has computed profiteering in respect of 512 units only in this report. These recipients were identified by the DGAP as per the documents provided by the Respondent, giving the names and addresses along with Unit numbers allotted to such recipients.

3. The Commission has carefully considered the Report of the DGAP and the other material placed on record and finds that the DGAP has reported profiteering to the tune of Rs. **4,26,534/-** for the Applicant No.1 and Rs. **14,65,30,712/-** for other recipients who are not Applicants in the present proceedings.

4. The Commission has considered the investigation report submitted by the DGAP and found that out of 1107 units in the said project the DGAP

has not calculated profiteering for 46 units due to insufficiency of data. Therefore, the Commission finds that the report submitted by the DGAP is incomplete and therefore, DGAP is directed to gather the relevant information by exhausting all available resources including getting relevant information from the concerned Jurisdictional Commissioner, as prescribed under the CGST Act, 2017 and Rule 132 of the CGST Rules, 2017 and submit a complete investigation report.

5. In view of the above, the DGAP is directed to submit a fresh and complete investigation report under Rule 133(4) of the CGST Rules, 2017 comprising of all the units of the project 'Jaypee Greens Kalypso Court', in terms of Section 171 of the CGST Act 2017.
6. A copy of this order be supplied to all the parties free of cost and file be consigned after completion.

S/d.  
(Ravneet Kaur)  
Chairperson

S/d.  
(Bhagwant Singh Bishnoi)  
Member

S/d.  
(Sangeeta Verma)  
Member

Certified Copy

  
(Jyoti Jindgar Bhanot)  
Secretary, CCI



**Copy to: -**

1. M/s Jaiprakash Associated Limited, Jaypee Greens, Sector- 128, Noida-201 304 (UP).
2. Shri Vinay Sheel Bansal & Shri Chander Sheel Bansal, 102, Ground Floor, Oakwood Apartments, Plot No. 29, 30 & 44, Phase-2, Nandagiri Hills, Jubilee Hills, Hyderabad- 500033.
3. Director General of Anti-profiteering, Central Board of Indirect Taxes & Customs, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, New Delhi-110001.
4. Guard File.

o/c