



BEFORE THE COMPETITION COMMISSION OF INDIA

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

Order No. 15/2023
Date of Institution 28.03.2022
Date of Order 22.08.2023

In the matter of:

1. Sh. Sparsh Chowdhary, R/o 3E, 204, Kul Ecoloch Nande, Balewadi Road, Pune – 411045.
2. Director General of Anti-Profiteering, Central Board of Indirect Taxes & Customs, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gale Market, New Delhi-110001.

Applicants

Versus

M/s Pearlite Real Properties Private Limited, Godrej One, 5th Floor, Pirojsha Nagar, Eastern Express Highway, Vikhroli (East), Mumbai, Maharashtra-400079

Respondent

Coram: -

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

ORDER

1. The Present Report dated 28.03.2022 had been received by the erstwhile National Anti-profiteering Authority (hereinafter referred to as "NAA") from the Director General of Anti-Profiteering (hereinafter referred to as "DGAP") after investigation under Rule 129 (6) of the Central Goods & Service Tax (CGST) Rules, 2017.
2. The DGAP vide the above said Report dated 28.03.2022 had inter-alia stated the following: -
 - i. The Applicant No. 1 alleged that the Respondent had not passed on the benefit of ITC to him in terms of the Section 171 of the CGST Act, 2017 by way of commensurate reduction in the price in the Respondent's project "**Godrej Elements**".
 - ii. On receipt of the reference from the Standing Committee on Anti-profiteering, a Notice of Initiation of Investigation under Rule 129 of the Rules was issued by the Director General of Anti-profiteering on 16.09.2021, calling upon the Respondent to reply as to whether he admitted that the benefit of ITC had not been passed on to the Applicant No. 1 by way of commensurate reduction in price 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 is from 01.07.2017 to 31.08.2021.

iv. In response to the Notice dated 16.09.2021, the Respondent submitted his reply vide various letters/e-mails. The replies of the Respondent are summed up as follows:

(a) *The Respondent is real estate developer engaged primarily in the business of real estate construction, development and other related activities. One of the projects undertaken by the Respondent in the state of Maharashtra is 'Godrej Elements'.*

(b) *The Respondent had submitted that the project "Godrej Elements" shall be outside the scope of provision of Section 171 of CGST Act since the said project was launched in June, 2018 viz., post GST regime. Accordingly, in his view, the investigation proceedings were required to be dropped. The Respondent had submitted the following documentary evidences: -*

i. Commencement Certificate for the project 'Godrej Elements'.

ii. RERA Certificate for the project 'Godrej Elements'.

iii. First booking details for the project 'Godrej Elements'.

v. On scrutiny of the documents submitted by the Respondent, DGAP has observed that all the homebuyers had booked their Units after the introduction of GST. The Respondent had charged GST @18% (effectively 12%) for the period from 22.06.2018 to 31.08.2021. This fact was verified by the DGAP from the tax invoices submitted by the Respondent. Further the Respondent had not opted for new scheme as per Notification No. 03/2019 Central Tax (Rate) dated 29.03.2019

and was charging GST @18% (effectively 12%) for the period from 01.04.2019 to 31.08.2021 after availing the Input Tax Credit.

- vi. From the verification of documents submitted by the Respondent and his submission, it was found by the DGAP that there was no sale or allotment of the flats in the said project in the pre-GST regime. In this regard, the DGAP has further stated that :-
- a) In the instant case, the Registration issued on 10.09.2021 by the Secretary, Maharashtra Real Estate Regulatory Authority (RERA) showed that the registration was valid for a period of 4 years, 07 months and 05 days commencing from 25.05.2018 and ending with 30.12.2022 unless renewed by the Maharashtra RERA in accordance with Section 5 of the RERA Act, 2016 read with Rule 6 of the Maharashtra RERA Rules.
 - b) From the documents submitted by the Applicant No. 1 as well as the Respondent, it was observed that first booking made by the Respondent in this project was on 22.06.2018 i.e. in post-GST period. The Respondent had submitted the Application Form dated 22.06.2018 of Mr. Vipin Panday, as the first buyer of the Flat No. K2B0803. Further, on scrutiny of the documents submitted by the Respondent viz. first tax invoice for demand cum allotment letter, demand letter of the Applicant No. 1 and other documents, it was also observed that the project "**Godrej Elements**" had started in the post-GST era. The Applicant No. 1 did not produce any evidence

to prove otherwise. There was no unit sold in the pre-GST era which could be compared with the post-GST base price to determine whether there was any profiteering.

- c) The Respondent had received Development Permission and Certificate of Commencement of work as per Permission Development Control Rule No. 6.6.1 issued vide Outward No. BMU/ Pra.Kra/Village: Hinjewadi/Tal: Mulshi/S.No.221 /A1 & Other/ 1747 / 17-18, dated 09.05.2018 by the Pune Metropolitan Regional Development Authority, Pune, Maharashtra
- vii. The date of issue of first tax invoice for demand cum allotment letter was 22.06.2018. The allotment of units, start of construction activities etc. had taken place in post-GST period. From the perusal of the Home-buyers' list submitted by the Respondent, it was observed that date of first booking of flats was 22.06.2018. Neither the Applicant No. 1 nor the Respondent had given any document to prove that any booking for the project was done in pre-GST period. Hence, the base price in pre-GST era could not be computed to compare with the price charged in post-GST era. It was also observed that the price charged for the said residential flat was for a new project developed and constructed by the Respondent after implementation of GST.
- viii. Section 171 of the CGST Act, 2017 comes into play in the event when there is a reduction in the rate of tax or there is an increase in the benefit of input tax credit. In the present case all the events i.e. allotment of units, agreement, booking and construction activities

took place in post-GST era. Since the project itself was started after implementation of GST w.e.f. 01.07.2017, there was no pre-GST turnover or ITC availability that could be compared with the post-GST turnover and input tax credit, to determine whether there was any benefit that was required to be passed on by way of commensurate reduction in price.

- ix. On the basis of the details of outward supply of Construction services submitted by the Respondent, it was also observed that the service has been supplied in the State of Maharashtra only.
- x. In view of the aforementioned findings, it was concluded that the project was launched in post-GST regime and there were no demands in the pre-GST era to compare with the turnover in post-GST era. No demand was raised nor was any payment received during pre-GST period. Also, the first booking was done on 22.06.2018 in the post-GST period. Therefore, provisions of Section 171(1) of the CGST Act, 2017 are not attracted in the present case. Thus, there seems to be no possibility of profiteering in this case.

3. The above Report was considered by the erstwhile NAA and *vide* Notice dated 08.04.2022, the Applicant No. 1 was directed to file his reply on the DGAP investigation report. However, no submissions were filed by the Applicant No. 1. Further, *vide* orders dated 25.04.2022, 09.05.2022, 19.05.2022 of the erstwhile NAA, three more opportunities were given to the Applicant No.1 for filing his submissions, but no submissions were filed by the Applicant No. 1. Further three opportunities for personal hearing on 16.08.2022, 08.09.2022 and 24.11.2022

respectively were also accorded by the erstwhile NAA to the Applicant no. 1, but he was not present in any of the hearings.

4. The above report of the DGAP was considered by the Competition Commission of India (hereinafter referred to as "Commission") on 03.08.2023 after it had been empowered to examine the cases of Anti-profiteering by the Central Government. In the interest of natural justice, the Commission accorded last opportunity for personal hearing to Applicant No. 1 on 17.08.2023. But the Applicant No. 1 did not appear for the hearing.
5. The Commission has carefully considered the DGAP's Report and finds that 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?
5. The Applicant No. 1 has neither made any submissions against the DGAP's Report dated 28.03.2022 nor appeared for the personal hearings regardless of the fact that plethora of opportunities were accorded to him.
6. On perusal of records available, the Commission finds that the complaint of profiteering was in respect of the purchase of unit in the Respondent's project "Godrej Elements", Pune, Maharashtra by Applicant No. 1. The Project was launched in June, 2018 i.e. post-GST implementation. All the recipients had booked their units after the introduction of GST. The Maharashtra RERA registration of the said project was granted on 25.05.2018. It was also found by the Commission that the Application form dated 22.06.2018 of the first buyer of

the project i.e. Mr. Vipin Panday was submitted during the GST period and the first tax invoice and demand cum allotment letter were issued in the GST period. Further, the 'Development Permission' and 'Certificate of Commencement of Work' as per Rule 6.6.1 of the 'Permission Development Control Rule' were issued by the Pune Metropolitan Regional Development Authority, Pune, Maharashtra on 09.05.2018 i.e. in the GST period. The chronology of the above events shows that the service rendered by the Respondent by way of construction and development of this project was clearly after the implementation of GST and not during the pre-GST regime.

7. The Commission also finds that all the relevant events i.e. RERA Certificate, booking and allotment of flats, Development Permission, Certificate of Commencement of construction activity and receipt of payments have taken place in the GST period only. Hence, there was no pre-GST tax rate or input tax credit availability that could be compared with the GST period tax rate and the input tax credit availability, to determine whether there was any benefit that was required to be passed on by way of reduction in price.
8. From the facts mentioned above, the Commission observes that no benefit of additional ITC during the GST period as compared to the pre-GST period has accrued in the case of this Project to the Respondent, which he is obliged to pass on to his buyers. Hence, the provisions of Section 171 of the CGST Act, 2017 are not attracted in this case and there is no requirement of any commensurate reduction in the prices of the units in the said project by the Respondent. Applicant No.1 could have availed the above benefit only if the above project was under execution/implementation before the date of GST

implementation viz., 01.7.2017. Hence, the allegations made by the Applicant No. 1 are incorrect and therefore, the same cannot be accepted.

9. Based on the above facts the Commission finds that the provisions of Section 171 (1) of the CGST Act, 2017 are not attracted in the Respondent's project "Godrej Elements". **Therefore, the proceedings in the present case are hereby dropped.**

10. A copy of this order be sent to the Applicants and the Respondent free of cost. File of the case be consigned after completion.

S/d.
(Bhagwant Singh Bishnoi)
Member

S/d.
(Ravneet Kaur)
Chairperson

S/d.
(Sangeeta Verma)
Member

Certified Copy


(Jyoti Jindgar Bhanot)
Secretary, CCI

File No. 22011/NAA/Pearlite Real/99/2022 | 637 - 640 Dated: 23.08.2023

Copy to: -

1. M/s Pearlite Real Properties Private Limited, Godrej One, 5th Floor, Pirojsha Nagar, Eastern Express Highway, Vikhroli (East), Mumbai, Maharashtra-400079.
2. Sh. Sparsh Chowdhary, R/o 3E, 204, Kul Ecoloch Nande, Balewadi Road, Pune - 411045.
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