



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

I.O. No. : 01/2024  
Date of Institution : 28.02.2023  
Date of Order : 06.02.2024

**In the matter of:**

1. Sh. Abhilash Mohanty, F – 501, Vertex Panache, Kokapet, Hyderabad, Telangana – 500 075.
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.

Applicants

**Versus**

M/s Vertex Homes Pvt. Ltd., Vertex Corporate, 4<sup>th</sup> Floor, Plot No. 8 & 9, Survey No. 66 & 67, Jubilee Enclave, Opp. Hitex Entrance, Madhapur, Hyderabad, Telangana – 500 081.

Respondent

**Coram:-**

1. Smt. Ravneet Kaur, Chairperson
2. Sh. Anil Agrawal, Member
3. Ms. Sweta Kakkad, Member

## ORDER

1. The Present Report dated 27.02.2023 has been received from the Applicant No. 2, i.e. the Director General of Anti-Profiteering (hereinafter referred to as the "DGAP") after a detailed investigation under Rule 129(6) of the Central Goods & Service Tax (CGST) Rules, 2017 (hereinafter referred to as "**the Rules**"). The brief facts of the present case are that a reference was received from the Standing Committee on Anti-profiteering to conduct a detailed investigation in respect of an application filed under Rule 128 of the Rules by Applicant No. 1 alleging profiteering in respect of construction service supplied by the Respondent. The Applicant No. 1 alleged that the Respondent had not passed on the benefit of Input Tax Credit (ITC) to him by way of commensurate reduction in the price of the Unit No. F-501 on Fifth Floor purchased from the Respondent in the project "Vertex Panache", situated at Kokapet, Gachibowli, Hyderabad on introduction of GST w.e.f. 01.07.2017, in terms of Section 171 of the CGST Act, 2017. The aforesaid reference was examined by the Standing Committee on Anti-profiteering in its meeting held on 07.04.2022 (received in the DGAP office on 30.05.2022), whereby it was decided to forward the same to the DGAP to conduct a detailed investigation in the matter.
  
2. On receipt of the reference from the Standing Committee on Anti-profiteering, a notice under Rule 129 of the Rules was issued by the DGAP on 06.06.2022, 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 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. In

response to the Notice dated 06.06.2022 and several reminders & summons the Respondent submitted his reply vide letters and e-mails and on the basis of the submissions of the Respondent, the DGAP has submitted that:-

- i. The period covered by the current investigation is from 01.07.2017 to 31.05.2022. Though the Respondent claimed that the Completion Certificates in respect of all the blocks were received from the Competent Authority prior to 31.05.2022 but the Respondent, vide his submission dated 14.11.2022, had confirmed that in respect of payment plan, the customers had opted for both construction linked as well as payment linked plans. Therefore, since the Completion Certificates had been received in respect of all six blocks by the Respondent but the nature of agreements as claimed by the Respondent were linked with construction plan as well as payment plan i.e. mixed, the investigation has been carried out for the period 01.07.2017 to 31.05.2022 and not upto the date of receipt of occupation certificate in respective blocks.
- ii. As per the information submitted by the Respondent, the project under investigation i.e. "Vertex Panache" got Completion Certificate for A, B & F Blocks on 29.10.2019 and for C, D & E Blocks on 27.01.2020. The Respondent was not registered under RERA as the project was started before RERA came into existence. In the pre-GST regime, the Respondent had opted for Composition scheme under Telangana VAT Act, 2005.
- iii. The Respondent claimed that the price quoted to the customers who had booked units in the post-GST regime was inclusive of the benefit under

Section 171 of the CGST Act, 2017. The sale deeds mentioned the same as follows:

“it is expressly agreed by the vendee that the price of the Flat mentioned herein includes the GST input tax Credit that is likely to accrue for the project.”

As per the home-buyers list submitted by the Respondent, it was observed that 200 number of buyers (Pre O.C) had booked the flats from the Respondent during the post-GST period. On scrutiny, it was observed that the Respondent had submitted sale deeds for 176 buyers. On scrutiny of those 176 sale deeds, it was observed that those documents mentioned that the price of the flats included ITC benefit of GST.

- iv. In order to examine the veracity of the sale deeds, a letter dated 06.02.2023 was sent to the Sub-Registrar, Gandipet, Telanagana requesting him to forward certified copies of all the sale deeds of the buyers in the project “Vertex Panache” executed on or after 01.07.2017. The Respondent vide e-mail dated 24.02.2023 informed that the Sub-Registrar, Gandipet had already forwarded the certified copies of sale deeds to the DGAP and further stated that he would not be able to provide the email-Ids of the customers as the project was completed long ago. Also, vide e-mail dated 25.02.2023, the Respondent had provided sample copies of certified sale deeds of 02 buyers along with the letter dated 22.02.2023 of the Sub-Registrar, Gandipet in which all the certified copies of sale deeds had been stated to be enclosed.

From the above, the Respondent claimed to have passed on the benefit of ITC to the aforesaid 200 home buyers in accordance with the requirements of Section 171 of the CGST Act, 2017. It was also observed that, the Respondent claimed that the said clause had also been agreed to by the post GST buyers as was evident from the sale deeds. However, certified copies of 200 sale deeds had not been received from the Sub-Registrar office till date (as mentioned in the letter dated 22.02.2023). Further, the Respondent did not provide e-mail Ids and phone numbers of the buyers and therefore, the DGAP could not verify the claim of the Respondent from the home buyers. As neither certified copies of sale deeds nor e-mail ids and phone numbers had been received by his office, therefore, the contention of the Respondent had not been considered in the present Report. Further, as and when all certified copies of sale deeds were received in the DGAP office from the Sub-Registrar, the same would be submitted to the Commission in due course and verification report would be submitted after scrutiny.

- v. As regards the allegation of profiteering, it was observed that prior to 01.07.2017, i.e., before the GST was introduced, the Respondent was eligible to avail credit of Service Tax paid on the input services (CENVAT credit of Central Excise Duty was not available) in respect of the flats for the project "Vertex Panache" sold by him. However, the Respondent was not eligible to avail ITC of VAT paid on the inputs/purchases in the pre-GST period. Further, post-GST, the Respondent could avail ITC of GST paid on all the inputs and input services. From the data submitted by the Respondent covering the period 01.04.2016 to 31.05.2022, it was evident

that the ITC as a percentage of the turnover that was available to the Respondent during the pre-GST period (01.04.2016 to 30.06.2017) was 1.07% and during the post-GST period (01.07.2017 to 31.05.2022) was 2.20% in the Project "Vertex Panache". This confirmed that in the post-GST regime, the Respondent had benefited from additional ITC to the tune of 1.13% [2.20% (-) 1.07%] of the turnover, amounting to Rs. 3,00,18,756/- which included 12% GST on the base amount.

- vi. The DGAP has concluded that that the Respondent had realized an amount to the tune of Rs. 3,00,18,756/- in respect of 337 buyers (including GST), which was inclusive of profiteering for Applicant No.1 which was Rs. 49,140 (inclusive of GST). The Respondent had total 521 flats in the project "Vertex Panache". Out of 521 flats, 146 flats were unsold and the Respondent had booked 375 (521-146) flats till 31.05.2022, Out of these 375 flats, the Respondent had booked 137 flats in the pre-GST period and 238 flats in the post GST period. Out of 238 buyers (post GST bookings), 38 flats were sold after getting completion certificate and the same were excluded from the computation of profiteering. Further, in respect of 337 buyers (375-38), the Respondent had not passed on any ITC benefit amounting to Rs. 3,00,18,756/- to them.
3. The above Report of the DGAP dated 27.02.2023 was considered by the Commission and a notice dated 21.07.2023 was issued to the Respondent directing him to explain why the above Report furnished by the DGAP should not be accepted and his liability for violation of the provisions of Section 171 of the CGST Act, 2017 should not be fixed and the penalty u/s 171 (3A) of the CGST

Act read with Rule 133 (3) (d) of the CGST Rules, 2017 should not be imposed. Both the Respondent and the Applicant were also directed to file their consolidated written submissions in respect of the above Report of the DGAP.

4. The Respondent has filed submissions dated 23.08.2023 vide which he has inter-alia stated that:-
  - i. The Respondent had not accepted the Report of the DGAP to impose an amount of Rs. 3,00,18,756/- as profiteered amount u/s 171 of the CGST Act, 2017.
  - ii. The price quoted to the customers in the post-GST regime was inclusive of the benefit u/s 171 of the CGST Act, 2017.
  - iii. The Sub-Registrar, Gandipet had sent the certified copies of 199 out of 200 sale deeds vide letter dated 22.02.2023. The DGAP had not considered those certified sale deeds in his Report.
  - iv. In spite of non-receipt of the certified copies of sale deeds, the DGAP had arrived at the profiteering amount.
5. Clarifications on the above submissions dated 23.08.2023 of the Respondent were sought from the DGAP under Rule 133(2A) of the CGST Rules, 2017. The DGAP vide letter dated 25.09.2023 has filed clarifications vide which the DGAP has stated that no certified copies of sale deeds have been received in the office of DGAP so far and the DGAP had considered all the available documents/data/evidences at the time of preparation of the Report dated 27.02.2023.
6. Copies of the DGAP's clarifications dated 25.09.2023 were forwarded to the Respondent/Applicant No. 1 for providing their counter reply/rejoinder. The Respondent vide letter dated 10.11.2023 submitted his rejoinder in which he

reiterated his earlier submissions dated 23.08.2023 and further submitted the DTDC Express Tracking No's. (1) D27863890 dated 24.02.2023, (2) D27863819 dated 25.02.2023, (3) V67132336 dated 27.02.2023, (4) D27863881 dated 27.02.2023 and (5) D26805795 dated 03.03.2023 vide which 199 certified sale deeds out of 200 had sent by the Sub-Registrar, Gandipet.

7. After carefully considering the Report/Clarifications furnished by the DGAP, the submissions/rejoinder made by the Respondent and the other material placed on record, the Commission observes that:-

- i. During the investigation, the Respondent has contended that the price quoted to the post-GST buyers was inclusive of the benefit of ITC under Section 171 of the CGST Act, 2017. The benefit of ITC was factored in the agreed price during the execution of sale deeds as there was the specific clause which has been mentioned as under:

*“it is expressively agreed by the vendee that the price of the Flat mentioned herein includes the GST input tax Credit that is likely to accrue for the project.”*

In support of his claim, the Respondent has submitted sale deeds for 176 buyers out of 200 buyers in post GST regime. On scrutiny of these sale deeds, the DGAP found that in the sale deeds specifically mentioned that the price of the flat includes ITC benefit of GST. However, due to non-availability of certified copies of sale deeds from the Sub-Registrar, Gandipet and e-mail-ids & phone numbers of the buyers, the DGAP has not considered the contention of the Respondent. The DGAP in his Report in Para 15 also stated that as and when all certified copies of sale deeds would be received from the Sub-Registrar, Gandipet, the same



would be submitted to the Authority in due course and verification report would be submitted after scrutiny. During the proceedings before the Commission, the Respondent has filed his submissions and rejoinder vide which the Respondent has also stated that the price quoted to the customers in post GST regime is inclusive of the benefit u/s 171 of the CGST Act, 2017. The Respondent further submitted that the Sub-Registrar, Gandipet has sent the certified copies of sale deeds to the DGAP vide letter dated 22.02.2023 on the request of the DGAP. The Respondent has also provided DTDC Express tracking numbers in this respect.

On perusal of the above, the Commission opines that the claim of the Respondent regarding the price quoted to the customers in the post GST regime being inclusive of the benefit under Section 171 of the CGST Act, 2017 needs to be verified. Therefore, the Commission directs the DGAP to re-examine the sale-deeds and submit report after thorough reinvestigation.

8. Therefore, without going in to the other merits of the present case the Report dated 27.02.2023 furnished by the DGAP cannot be accepted due to the reasons mentioned above and accordingly, the DGAP is directed to further investigate the present case under Rule 133(4) of the CGST Rules, 2017 on the issue mentioned above and recalculate the profiteered amount, if required. The Respondent is also directed to extend all necessary assistance to the DGAP and furnish him necessary documents or information as required during the course of further investigation of the present case.

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

S/d  
(Sweta Kakkad)  
Member

S/d  
(Anil Agrawal)  
Member

S/d  
(Ravneet Kaur)  
Chairperson

Certified Copy

  
Anupama Anand  
(Secretary, CCI)

6.2.24

File No. M/AP/23/Vertex/2023-Sectt. 149-152

Date: 06.02.2024

Copy to:-

1. M/s Vertex Homes Pvt. Ltd., Vertex Corporate, 4th Floor, Plot No. 8 & 9, Survey No. 66 & 67, Jubilee Enclave, Opp. Hitex Entrance, Madhapur, Hyderabad, Telangana- 500 081.
2. Sh. Abhilash Mohanty, F-501, Vertex Panache, Kokapet, Hyderabad, Telangana- 500 075.
3. Directorate General of Anti-Profitteering, 2nd Floor, BhaiVir Singh SahityaSadana, BhaiVir SinghMarg, New Delhi-110001.
4. Guard File