

**BEFORE THE NATIONAL ANTI-PROFITEERING AUTHORITY
UNDER THE CENTRAL GOODS & SERVICES TAX ACT, 2017**

I.O. No. 13 /2022
Date of Institution 29.10.2021
Date of Order 22.08.2022

In the matter of:

1. 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 Victory Valley Pvt. Ltd., 305, 3rd Floor, Kanchan House, Karampura Commercial Complex, New Delhi - 110015.

Respondent

Quorum:-

Sh. Amand Shah, Technical Member & Chairman,
Sh. Pramod Kumar Singh, Technical Member,
Sh. Hitesh Shah, Technical Member.

Present:-

1. None for the Applicant.
2. None for the Respondent.

ORDER

1. The present Report dated 28.10.2021, had been received from the Director General of Anti-Profiteering (**DGAP**) after a detailed investigation as per the directions under Rule 133(5) (a) of the Central Goods and Service Tax Rules (**CGST**), 2017 contained in this Authority (**NAA**)'s Order IO No. 14/2019 dated 21.10.2019 in case of M/s Ireo Grace Realtech Pvt. Ltd Project "**The Corridor**".
2. The DGAP vide his Report dated 28.10.2021 had inter-alia submitted the following points :-
 1. The Authority (hereinafter referred to as "the NAA") directed DGAP to further investigate all other projects of the Respondent for violation of

provisions of Section 171 of the Central Goods and Service Tax Act, 2017. Herein below is the list of projects under the Brand Name “Ireo” as submitted by the Respondent before NAA.

Table A

| S.No. | Name of the Company | Name of the Project | Location | Date of Occupation Certificate | GST benefit derieved based on DGAP methodology |
|-------|-------------------------------|--------------------------------|-------------------|--|--|
| 1 | Ireo Pvt. Ltd. | Ireo Grand Arch | Gurugram, Haryana | 18.09.2014 17.12.2015 08.02.2017 | No Benefit derived (OC before GST) |
| 2 | Ireo Pvt. Ltd. | Ireo Uptown | Gurugram, Haryana | 18.02.2015 21.10.2015 | No Benefit derived (OC before GST) |
| 3 | Ireo Pvt. Ltd. | Skyon | Gurugram, Haryana | 26.08.2016 14.09.2017 | No Benefit derived |
| 4 | Ireo Pvt. Ltd. | Ireo City Central | Gurugram, Haryana | 20.11.2018 | No Benefit derived |
| 5 | Ireo Pvt. Ltd. | Managed Service Apartment | Gurugram, Haryana | | No Benefit derived |
| 6 | Ireo Victory Valley Pvt. Ltd | Victory Valley | Gurugram, Haryana | 25.07.2016 28.09.2017 | No Benefit derived |
| 7 | Ireo Waterfront Pvt. Ltd. | Ireo Waterfront | Ludhiana, Punjab | 14.03.2012 02.08.2012 07.06.2013 02.08.2013 06.08.2013 22.08.2013 10.01.2014 02.09.2015 27.11.2017 29.11.2017 | No Benefit derived |
| 8 | Puma Realtors Pvt. Ltd. | Ireo Rise | Mohali, Punjab | 30.06.2017 01.03.2018 | No Benefit derived |
| 9 | Ireo Pvt. Ltd. | Gurgaon Hills | Gurugram, Haryana | Applied on 25.09.2018 | 2.14% |
| 10 | Ireo Residences Co. Pvt. Ltd. | Grand Hyatt Gurgaon Residences | Gurugram, Haryana | | 0.98% |

II. The DGAP in light of the NAA’s direction to investigate under Rule 133(5) of the CGST Rules, took all the projects of the Respondent (under Brand name Ireo) for investigation. The Occupancy Certificates in respect of the projects “Ireo Grand Arch” and “Ireo Uptown” at serial No.1 and 2 of the table above had been issued in the pre-GST itself, and hence the said two projects were kept out of the purview of the investigation. The investigation Report in respect of the projects “Ireo Grand Arch” and “Ireo Uptown” at serial No. 9 and 10 of the table above have been already been submitted to the Authority. Accordingly, the NOI had been issued 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.

III. Accordingly, it was decided to expand the scope of investigation and collect evidence necessary to determine whether the benefit of ITC had

been passed on in terms of Section 171 of the CGST Act, 2017 to the recipients in respect of construction service supplied by

- 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”.**
- IV. The present report is in respect of the M/s Ireo Victory Valley Pvt. Ltd. for his project “Ireo Victory Valley”. The period covered by current investigation is from 01.07.2017 to 31.12.2020.
- V. The Respondent had received part Occupancy Certificate on 25.07.2016 and for the other part Occupancy Certificate was received on 28.09.2017. However, as seen from the copy of buyer agreement dated 12.10.2016 in respect of Mrs. Shweta Mathur of the project “Victory Valley”, the nature of agreements entered into with the prospective home buyers in respect of the said project are payment linked and also as the Respondent have opted for payment of GST availing the ITC as envisaged under Notification No. 3/2019- Central Tax (Rate).
- VI. In response to the Notice dated 15.01.2021, the Respondent submitted his reply vide letters/emails dated 28.01.2021, 22.06.2021, 17.09.2021 and 22.09.2021.
- VII. Vide the aforementioned letters/e-mails, the Respondent submitted the following documents/information:
- a. Brief Profile of the Noticee.
 - b. Copies of GSTR-1 returns for the period July, 2017 to Dec, 2020.
 - c. Copies of GSTR-3B returns for the period July, 2017 to Dec, 2020.
 - d. Copy of GSTR-9 return for F.Y. 2017-18, 2018-19 & 2019-20.
 - e. Copy of Tran-1.
 - f. Copy of Electronic Credit Ledger for the period July, 2017 to Dec, 2020.
 - g. Copy of VAT returns in Form VAT-R13 for the period April, 2016 to June, 2017.
 - h. Copy of ST-3 returns for the period April, 2016 to June, 2017.
 - i. Copy of Notice of possession dated 22.06.2018, copy of statement of account as on 22.06.2018, copy of payment request dated 30.09.2016, copy of buyer agreement dated 12.10.2016 in respect of Mrs. Shweta Mathur of the project “Victory Valley”.
 - j. CENVAT/Input Tax Credit register for the period April, 2016 to Dec, 2020.

- k. Details of applicable tax rates, pre-GST and post-GST.
- l. Copy of Balance Sheet for FY 2016-17, 2017-18, 2018-19 & 2019-20.
- m. Copy of Development agreement dated 10.06.2010 between land owner (KSS Properties Private Limited) and developer (Ireo Victory Valley Private Limited).
- n. Copy of Development agreement dated 10.06.2010 between land owner (High Responsible Realtors Private Limited) and developer (Ireo Victory Valley Private Limited).
- o. Copy of Annexure-IV dated 09.05.2019 for the project "Ireo Victory Valley".
- p. Status of the project as on 31.12.2020 in terms of sold and unsold units for the project "Victory Valley".
- q. List of home buyers for the projects "Victory Valley".
- r. Details of ITC of VAT and ST for the period April, 2016 to June, 2017 and ITC of GST for the period July, 2017 to December, 2020.
- s. Copy of form of Occupation Certificate in Form BR-VIII issued vide Memo No. ZP-358/SD(BS)/2016/14990 dated 25.07.2016 by DG,TCP, Haryana, Chandigarh.
- t. Copy of form of Occupation Certificate in Form BR-VII issued vide Memo No. ZP-358-Vol-I/SD(BS)/2017/24532 dated 28.09.2017 by DG,TCP, Haryana, Chandigarh.

VIII. The Respondent vide his letter dated 22.06.2021 submitted that "all the details/ documents / information furnished by us are confidential and is furnished solely for the purpose of the investigation undertaken" and accordingly the same have been treated as Confidential in terms of Rule 130 of the CGST Rules, 2017.

IX. In response to the NOI dated 15.01.2021, the Respondent vide his submission dated 22.06.2021 provided the details of turnover and CENVAT credit /ITC availed for the project "Victory Valley" *as mandated under erstwhile CENVAT Credit Rules 2004, present CGST Rules 2017 & RERA regulations.*

X. On perusal of Annexure-IV dated 09.05.2019 submitted by the Respondent in respect of the project "Victory Valley", it is seen that there are total 830 units constructed in the said project. However, as seen from the status of the project as on 31.12.2020 submitted by the Respondent, there are 996 units in total (951 sold and 45 unsold). On being pointed out, the Respondent vide his submission dated 17.09.2021 clarified that there are total 996 units in the project "Victory Valley" out of which 951 units are sold and 45 unsold and

that in Annexure-IV dated 09.05.2019 only residential units were mentioned. Summary of the Number and Category of Units and sold-unsold status as submitted by the Respondent is as below:

| S. No. | Category | Total Units | Sold Units | Unsold Units |
|--------|--------------------|-------------|------------|--------------|
| 1 | Residential | 830 | 791 | 39 |
| 2 | Retail | 19 | 17 | 2 |
| 3 | EWS | 147 | 143 | 4 |
| | Grand Total | 996 | 951 | 45 |

- XI. Further, the Respondent informed that the provisions of RERA are not applicable on the project "Victory Valley". The Occupancy Certificate for the project had been granted in form BR-VIII issued vide Memo No. ZP-358/SD(BS)/2016/14990 dated 25.07.2016 by DG,TCP, Haryana, Chandigarh and in Form BR-VII issued vide Memo No. ZP-358-Vol-I/SD(BS)/2017/24532 dated 28.09.2017 by DG,TCP, Haryana, Chandigarh . Details of the same is as below:

| S. No. | Tower/ Block No. | No. of Dwelling Units | No. of Floors | Occupancy Certificate & Date |
|--------|------------------|-----------------------|--|--|
| 1 | Block D-8 | 8 | G+3 | Form BR-VIII issued vide Memo No. ZP-358/SD(BS)/2016/14990 dated 25.07.2016 |
| 2 | Block D-9 | 16 | G+7 | |
| 3 | Block D-24 | 16 | G+7 | |
| 4 | Block D-25 | 12 | G+5 | |
| 5 | Block D-26 | 8 | G+3 | |
| 6 | Block D-27 | 2 | G+1 | |
| 7 | Block-A | 208 | Ground Floor to 50 th Floor | Form BR-VII issued vide Memo No. ZP-358-Vol-I/SD(BS)/2017/24532 dated 28.09.2017 |
| 8 | Block-B | 153 | Ground Floor to 39 th Floor | |
| 9 | Block-C | 119 | Ground Floor to 34 th Floor | |
| 10 | Block-D1-2A | 2 | Ground Floor to 1 st Floor | |
| 11 | Block-D2-4A | 8 | Ground Floor to 3 rd Floor | |
| 12 | Block-D3-8C | 16 | Ground Floor to 7 th Floor | |
| 13 | Block-D4-8C | 16 | Ground Floor to 7 th Floor | |

| | | | |
|----|----------------------|-----|--|
| 14 | Block-D5-4A | 8 | Ground Floor to 3 rd Floor |
| 15 | Block-D6-2A | 2 | Ground Floor to 1 st Floor |
| 16 | Block-D7-2A | 2 | Ground Floor to 1 st Floor |
| 17 | Block-D10-10B | 18 | Ground Floor to 9 th Floor |
| 18 | Block-D11-12B | 22 | Ground Floor to 11 th Floor |
| 19 | Block-D12-10C | 20 | Ground Floor to 9 th Floor |
| 20 | Block-D13-6C | 12 | Ground Floor to 5 th Floor |
| 21 | Block-D14-4C | 8 | Ground Floor to 3 rd Floor |
| 22 | Block-D15-8C | 16 | Ground Floor to 7 th Floor |
| 23 | Block-D16-10B | 16 | Ground Floor to 9 th Floor |
| 24 | Block-D17-12B | 20 | Ground Floor to 11 th Floor |
| 25 | Block-D18-10B | 18 | Ground Floor to 9 th Floor |
| 26 | Block-D19-8C | 16 | Ground Floor to 7 th Floor |
| 27 | Block-D20-6C | 12 | Ground Floor to 5 th Floor |
| 28 | Block-D21-8C | 16 | Ground Floor to 7 th Floor |
| 29 | Block-D22-10C | 18 | Ground Floor to 9 th Floor |
| 30 | Block-D23-12A | 22 | Ground Floor to 11 th Floor |
| 31 | EWS Block | 147 | Ground Floor to 6 th Floor |
| 32 | Community Building-1 | | LG+UG+1 |
| 33 | Community Building-2 | | Ground Floor |
| 34 | Community Building-3 | | Lower Ground Floor |

XII. The DGAP submitted that it was clear that the credit on input services was admissible to the Respondent under Rule 2(l) of the Cenvat Credit Rules

2004, which was utilized to pay service tax. Further, as seen from the Respondent's VAT returns for the period from April, 2016 to June, 2017 and also from his submission dated 22.06.2021 providing the details of turnover and CENVAT credit /ITC availed for the project "Victory Valley", it is seen that the Respondent **was under composition scheme of VAT and have not availed the ITC of VAT.** Therefore, the 'NIL' ITC of VAT as submitted by him had been considered for computation of profitability.

XIII. It was observed that prior to 01.07.2017, i.e., before GST was introduced, the Respondent were eligible to avail CENVAT credit of Service Tax paid on the input services but no ITC of VAT was eligible to him since the Respondent was under the composition scheme of VAT. Further, CENVAT credit of Central Excise duty paid on the inputs was not admissible as per the CENVAT Credit Rules, 2004, which was 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 submitted by the Respondent for the period April, 2016 to December, 2020, the details of the ITC availed by them, his turnover from the project "Victory Valley" and the ratio of ITC to the turnover, 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-'A' below:

| Table-A | | | |
|----------------|---|---|---|
| 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) | 7,76,04,402 | - |
| 2 | Input Tax Credit of VAT Paid on Purchase of Inputs (B) | - | - |
| 3 | Input Tax Credit of GST Availed (C) | - | 6,51,53,801 |
| 4 | Total CENVAT/Input Tax Credit Available (D) | 7,76,04,402 | 6,51,53,801 |
| 5 | Turnover for Flats as per Home Buyers List (E) | 81,50,48,633 | 111,93,06,820 |
| 6 | Total Saleable Area (in SQF) (F) | 24,50,676 | 24,50,676 |
| 7 | Total Sold Area (in SQF) relevant to turnover (G) | 10,54,006 | 14,10,775 |
| 8 | Relevant ITC [(H)= | 3,33,76,698 | 3,75,06,947 |

| | | | |
|---|--|-------|-------|
| | (D)*(G)/(F)] | | |
| 9 | Ratio of ITC Post-GST [(I)=(H)/(E)*100] | 4.10% | 3.35% |

*The calculation above, is based on the home-buyers demand data submitted by the Respondent vide his email dated 22.09.2021.

- XIV. The Respondent vide his submission dated 22.09.2021 submitted a copy of home buyers list for 951 homebuyers of the project "Victory Valley". On examination of the same it is seen that total 340 units were sold post Occupancy Certificate. Hence these 340 units have not been taken into consideration for computation of profiteering in as much as these units do not attract GST. Accordingly, the 611 units (951-340=611) which were booked before receipt of Occupancy Certificate have been considered for computation of profiteering. Further, Out of the said 611 units, post-GST, demands have been raised and advances received in respect of 536 home buyers only.
- XV. The Respondent's project under investigation i.e. Ireo Victory Valley commenced in the year 2009 and part Occupancy Certificate was received on 25.07.2016 and the Occupancy Certificate for the balance part was received on 28.09.2017. This implies that the subject project under investigation was almost complete in the pre-GST regime itself. The left out portion of construction was also completed immediately after implementation of GST i.e. by September, 2017. Normally, the credit earned on material purchases/services received will be higher in the initial stages of construction than what it will be in the latter stages. Therefore, the credit earned in the post GST regime was even lesser than the credit of Service tax earned in the 15 month pre GST period considered for investigation resulting in lower ratio of ITC to turnover in the post GST regime.
- XVI. The DGAP also submitted that the ITC as a percentage of the turnover that was available to the Respondent during the pre-GST period (April, 2016 to June, 2017) was 4.10% and during the post-GST period (July, 2017 to December, 2020), it was 3.35% and hence it was concluded that no benefit of additional ITC accrued to the Respondent and that the provisions of 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*", have not been contravened by the Respondent in the present case.
- XVII. The present investigation covers 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 Victory Valley", had 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 is yet to be completed. Further, In respect of the units/home buyers in whose case agreement had been made prior to the receipt of Occupancy Certificate and where balance amount is 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.

3. The quasi-judicial proceedings in the matter could not be completed earlier by the Authority due to lack of required quorum of members in the Authority during the period 29.04.2021 till 23.02.2022, and that the minimum quorum was restored only w.e.f. 23.02.2022 and hence the matter was taken up for proceedings only after dated 23.02.2022.
4. The above Report was considered by this Authority in its sitting and it was decided that no hearing opportunity is required to be accorded as there is no complainant in this case and no profiteering has been established against the Respondent.
5. The Authority has carefully considered the DGAP's Report and find 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?
6. The Authority finds that the Respondent is a construction service provider. The Respondent had got approval for development of total 996 residential , retail and EWS units. The DGAP has submitted that out of total, 951 units were sold and 45 were unsold and the Respondent had received Occupancy Certificate in two parts i.e one on 25.07.2016 and balance part Occupancy Certificate was received on 28.09.2017.

The Authority concur with the observation of the DGAP that the project was almost complete in pre GST period and hence the credit earned on material purchase/services received were higher in the pre GST period than in the final stage of project i.e. in post GST period. Based on the figures of turnover and ITC for the pre GST and post GST period, it was submitted by DGAP that ITC as a percentage of the turnover that was available to the Respondent for the project "Ireo Victory Valley" during the pre-GST period (April, 2016 to June, 2017) was 4.10% and during the post-GST period (July, 2017 to December, 2020), it was 3.35% and accordingly nil profiteering was concluded by the DGAP in this case.

7. However, the above findings of the DGAP are not elaborate, incomplete, unreasoned and untenable because of the following reasons: -

I. The Respondent in his own submissions claimed that he has built 147 EWS units, however, the Occupancy certificate received on 25.07.2016 and 28.09.2017 has mismatched figure of 168(147+21) EWS units. The details of 21 EWS indicated in OC dated 25.07.2018 has not been discussed in the DGAP report dated 28.10.2021.

II. In the table A of the DGAP Report, Total ITC figures belonging to 951 units (Residential, retail and EWS) have been considered however, the turnover of retail units has not been considered in the DGAP report.

III. The Details of reversal of ITC on receiving of OC has also not been discussed in the DGAP Report.

8. Based on the above reasons we find that further investigation is required in the present case on the above issues before a reasoned and justifiable order could be passed. Accordingly, the DGAP is directed to cause further investigation on the above issues in terms of Rule 133 (4) of the CGST Rules, 2017 and furnish Report covering all 951 units (residential, retail and EWS units) within a period of 2 months from the date of receipt of this order.

9. Further, the Hon'ble Supreme Court, vide its Order dated 23.03.2020 in Suo Moto Writ Petition (C) no. 3/2020, while taking suo moto cognizance of the situation arising on account of Covid-19 pandemic, had extended the period of limitations prescribed under general law of limitation or any other special laws (both Central and State) including those prescribed under Rule 133(1) of the CGST Rules, 2017, as was clear from the said Order which states as follows:-

“A period of limitation in all such proceedings, irrespective of the Limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended w.e.f. 15th March 2020 till further order/s to be passed by this Court in present proceedings.”

Further, the Hon'ble Supreme Court, vide its subsequent Order dated 10.01.2022 had extended the period(s) of limitation till 28.02.2022 and the relevant portion of the said Order was as follows:-

"The Order dated 23.03.2020 was restored and in continuation of the subsequent Orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it was directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings."

Accordingly this Order having been passed today falls within the limitation prescribed under Rule 133(1) of the CGST Rules, 2017.

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


Sd/-
(Amand Shah)
Technical Member &
Chairman

Sd/-
(Pramod Kumar Singh)
Technical Member

Sd/-
(Hitesh Shah)
Technical Member

Certified Copy

o/c


(Dinesh Meena)
Secretary, NAA



F. No. 22011/NAA/Ireo (Victory Valley)/43/2021 | 8290 Date: 24.08.2022
Copy To:- — 8292

1. M/s Ireo Victory Valley Pvt. Ltd., 305, 3rd Floor, Kanchan House, Karampura Commercial Complex, New Delhi - 110015.
2. Directorate General of Anti-Profiteering, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, New Delhi-110001.
3. Guard File.