

BEFORE THE NATIONAL ANTI-PROFITEERING AUTHORITY

UNDER THE CENTRAL GOODS & SERVICES TAX ACT, 2017

Case No. : 80/2022
Date of Institution : 31.08.2021
Date of Order : 30.09.2022

In the matter of:

1. Sh. Deepak Garg, on behalf of his mother Mrs. Chetna Garg, resident of B.B. enterprises, D-55, Sector-50, Noida.
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 JKG Construction Pvt. Ltd., B-174, 1st Floor, Yojna Vihar, New Delhi-110092.

Respondent

Quorum:-

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

Present :-

1. None for the Applicant No.1
2. None for the Respondent.

ORDER

1. The present Report dated 31.08.2021 had been received from the Applicant No. 2 i.e. the Director General of Anti-profitteering (**DGAP**) after a detailed investigation under Rule 129(6) of the Central Goods & Services Tax (**CGST**) Rules, 2017 alleging profiteering by the Respondent in respect of the purchase of shops in the Respondent's project "**JKG Palm Court**" by not passing on the benefit of Input Tax Credit (ITC) by way of commensurate reduction in prices after implementation of GST w.e.f. 01.07.2017. The Standing

Committee forwarded the copy of the complaint of Applicant No. 1 to the DGAP for detailed investigation.

2. The DGAP vide above said Report dated 31.08.2021 has inter-alia stated that:-

- i) On receipt of the reference from the Standing Committee on Anti-profiteering, a Notice for initiation of investigation under Rule 129 of the Rules was issued by the Director General of Anti-profiteering on 20.11.2020, calling upon the Respondent to reply as to whether he admit that the benefit of ITC had not been passed on to the recipients 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 documents in support of his reply. Further, the Respondent was afforded an opportunity to inspect the non-confidential evidences/information which formed the basis of the said Notice, during the period 03.12.2020 to 04.12.2020. The authorized representative of the Respondent availed of the said opportunity on 04.12.2020.
- ii) Vide e-mail dated 17.08.2021, the Applicant was also given an opportunity during 19.08.2021 & 23.08.2021 to inspect the non-confidential documents/reply furnished by the Respondent. The Applicant availed of the said opportunity on 19.08.2021. The Applicant vide email dated 20.08.2021 submitted his observation on the documents inspected and made his submission.
- iii) The period covered by the current investigation was from 01.07.2017 to 31.10.2020.

- iv) The statutory time limit to complete the investigation was upto 14.04.2021, as per Rule 129(6) of the CGST Rules, but, due to *force majeure* caused in the light of Covid-19 pandemic, the investigation could not be completed on or before the above date. However, in terms of the Notification No. 35/2020-Central Tax dated 03.04.2020, as amended vide Notification No. 55/2020-Central Tax dated 27.06.2020 and 91/2020-Central Tax dated 14.12.2020, issued by the Central Government, wherein the last date for submission of report had been extended upto 31.03.2021. Further, Hon'ble Supreme Court of India passed an Order dated 08.03.2021 in *Suo Moto* Writ Petition (Civil) No. 3 of 2020, wherein it was stated that "in cases where the limitation would had expired during the period between 15.03.2020 till 14.03.2021, notwithstanding the actual balance period of limitation remaining, all persons shall had a limitation period of 90 days from 15.03.2021. In the event the actual balance period of limitation remaining, with effect from 15.03.2021, was greater than 90 days, that longer period shall apply." The above relief had been extended and the period from 14.03.2021 till further orders shall also stand excluded in computing the limitation period as per the Hon'ble Supreme Court's Order dated 27.04.2021 passed in Miscellaneous Application No. 665/2021 in SMW (C) No. 3/2020.
- v) As complete and relevant documents were not submitted by the Respondent even after repeated requests, Summons under Section 70 of the CGST Act, 2017 read with Rule 132 of the Rules was issued on 18.05.2021 to Shri Jai Kumar Goel, Director of the

Respondent to produce the relevant documents. In response to the Summons dated 18.05.2021 and 02.08.2021. The Respondent had submitted complete information/ documents required for investigation on 17.08.2021.

- vi) In response to the Notice dated 20.11.2020 and various reminders and Summons, the Respondent replied vide letters/e mails dated 04.12.2020, 10.12.2020, 24.12.2020, 04.01.2021, 15.02.2021, 24.02.2021, 01.03.2021, 01.06.2021, 24.06.2021, 25.06.2020 and 17.08.2021.
- vii) Vide the above mentioned replies, the Respondent submitted that the Company was a real estate developer, incorporated on May, 2001 with the Registrar of Companies, NCT, New Delhi with the main object of promoting Real Estate Business through developing Residential cum commercial complexes. The Company was engaged in business of construction of Residential cum commercial properties at Greater Noida. The main project carried by the company was JKG Palm Court, which was being constructed in 02 phases.
- viii) The Respondent had claimed that he had already passed on the benefit of Rs. 1,86,112/- to the Applicant and Rs. 6,13,37,994/- to the other customers in terms of Section 171 of the CGST Act, 2017. Thus, the Respondent claimed that he had passed on total benefit of Rs. 6,15,24,106/-.
- ix) Vide the aforementioned letters/e-mails, Respondent submitted the following documents/ information:

- (a) Copies of GSTR-1 returns for the period July, 2017 to October, 2020.
- (b) Copies of GSTR-3B returns for the period July, 2017 to October, 2020.
- (c) Copies of Tran-1 return for transitional credit availed by the Noticee.
- (d) Copies of VAT & ST-3 returns for the period April, 2016 to June, 2017.
- (e) Electronic Credit Ledger for the period July, 2017 to October, 2020.
- (f) CENVAT/ITC register for the F.Ys. 2016-17 to 2020-21 (upto October, 2020).
- (g) Status of project– Architect Certificate as on 30.09.2020 for Phase 1 & 2 tower wise.
- (h) Copies of all demand letters issued and sale agreement in the name of Mrs. Chetna Garg.
- (i) Copy of temporary Occupancy Certificate dated 27.06.2019.
- (j) Details of applicable Tax rates, pre-GST and post-GST.
- (k) Details of Service Tax, CENVAT credit for the period April, 2016 to June, 2017 and output GST and ITC of GST for the period July, 2017 to October, 2020.
- (l) Copy of Financial Statements for FY 2016-17 to 2019-20.
- (m) Copy of project report submitted to RERA.
- (n) Copy of Agreement between land owners for the project.
- (o) List of all buyers in the project “JKG Palm Court”.

8

- x) The Respondent vide email dated 10.12.2020 submitted that all his submission/documents made to department vide email dated 10.12.2020 was confidential. However, the Respondent had not given any non-confidential summary of the same. he had also not given any reason as to why summarization was not possible.
- xi) Para 5 of Schedule-III of the CGST Act, 2017 (Activities or Transactions which shall be treated neither as a supply of goods nor a supply of services) which reads as “Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building”. Further, clause (b) of Paragraph 5 of Schedule II of the CGST Act, 2017 reads as“(b) construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration had been received after issuance of completion certificate, where required, by the competent authority or after his first occupation, whichever was earlier”. Thus, the ITC pertaining to the residential units and commercial shops which was under construction but not sold was provisional ITC which might be required to be reversed by the Respondent, if such units remain unsold at the time of issue of the completion certificate, in terms of Section 17(2) & Section 17(3) of the CGST Act, 2017, which read as under:

Section 17 (2) “Where the goods or services or both was used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act and partly for effecting exempted supplies under the said Acts, the amount of credit shall be

restricted to so much of the input tax as was attributable to the said taxable supplies including zero-rated supplies”.

Section 17 (3) “The value of exempted supply under sub-section (2) shall be such as might be prescribed and shall include supplies on which the recipient was liable to pay tax on reverse charge basis, transactions in securities, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building”.

Therefore, the ITC pertaining to the unsold units might not fall within the ambit of this investigation and the Respondent was required to recalibrate the selling price of such units to be sold to the prospective buyers by considering the net benefit of additional ITC available to him post-GST.

- xii) As regards the allegation of profiteering with regard to Project- JKG Palm Court, it was observed that prior to 01.07.2017, i.e., before the GST was introduced, the Respondent were eligible to avail CENVAT credit of Service Tax paid on input services. However, CENVAT credit of Central Excise duty paid on inputs was not admissible, as per the CENVAT Credit Rules, 2004, which was in force at the material time. Moreover, the Respondent were paying VAT under Uttar Pradesh VAT Scheme, wherein he were required to discharge his output VAT liability on deemed value addition on the purchase of the inputs. It was also evident from the submissions made by the Respondent that there was no direct correlation between the turnover for VAT as reported in his VAT returns for the period April, 2016 to June, 2017, filed by the Respondent and the actual demand raised by him from the buyers. Therefore, the ITC of VAT and the VAT turnover had not been considered for

computation of the ratio of ITC to the turnover for the pre-GST period. Further, post-GST, the Respondent could avail ITC of GST paid on all the inputs and the input services. From the information submitted by the Respondent for the period April, 2016 to October, 2020, the details of the ITC availed by them, his turnover from the project “JKG Palm Court” and the ratio of ITC to turnover, during the pre-GST (April, 2016 to June, 2017) and post-GST (July, 2017 to October, 2020) periods, was furnished in table-‘A’ below:

Table-‘A’ **(Amount in Rs.)**

S. No.	Particulars	April, 2016 to June, 2017	July, 2017 to October, 2020
1	CENVAT of Service Tax Paid on Input Services as per ST-3 (A)	1,06,74,368	-
2	Input Tax Credit of VAT Paid on Purchase of Inputs as per VAT Returns (B)	-	-
3	Total CENVAT/Input Tax Credit Available (C)= (A+B)	1,06,74,368	-
4	Input Tax Credit of GST Availed as per GST Return (D)	-	8,76,37,853
5	Net Turnover as per Home Buyers List (E)	18,89,09,998	65,75,79,319
6	Total Saleable Area in the project (as per Home BuyersList (Sq ft) (F)	9,41,755	9,41,755
7	Area Sold relevant to turnover as per Home BuyersList (G)	1,33,241	5,49,715
8	Relevant CENVAT/Input Tax Credit (H)= [(C)*(G)/(F)] or [(D)*(G)/(F)]	15,10,227	5,11,55,388
9	Ratio of CENVAT/ ITC to Taxable Turnover [(I)=(H)/(E)]	0.80%	7.78%

xiii) From the Table- ‘A’ above, it was clear that the ITC as a percentage of the turnover that was available to the Respondent during their GST period (April, 2016 to June, 2017) was 0.80% and during the post- GST period (July, 2017 to October, 2020), it was 7.78%. This clearly confirms that post-GST, the Respondent

had benefited from additional ITC to the tune of 6.98% [7.78% (-) 0.80%] of the turnover. Accordingly, the profiteering had been examined by comparing the applicable tax rate and ITC available in the pre-GST period (April, 2016 to June, 2017) when effective Service Tax @4.50% was payable with the post-GST period (July, 2017 to October, 2020) when the effective GST rate was 12% (GST @18% along with 1/3rd abatement for land value) on construction service, vide Notification No.11/2017-Central Tax (Rate), dated 28.06.2017.

- xiv) On the basis of the figures contained in Table-‘A’ above, the comparative figures of the ratio of ITC availed/available to the turnover in the pre-GST and post- GST periods as well as the turnover, the recalibrated base price and the excess realization (profiteering) from the home buyers who booked flats during the pre-GST period, was tabulated in Table-‘B’ below:-

Table-‘B’ (Amount in Rs.)

S. No.	Particulars		Post- GST
1	Period	A	01.07.2017 to 31.10.2020
2	Output GST Rate (%)	B	12.00%
3	Ratio of CENVAT credit/ ITC to Total Turnover as per table - 'B' above (%)	C	7.78%
4	Increase in ITC availed post-GST (%)	D= 7.78% less 0.80%	6.98%
5	<u>Analysis of Increase in input tax credit:</u>		
6	Base Price raised/collected during July, 2017 to October, 2020 (Rs.)	E	65,75,79,319
9	GST @ 12% over Base Price	F=E*12%	7,89,09,518
10	Total amount collected/raised by Noticee	G= E+F	73,64,88,836
11	Recalibrated Base Price	H= (E)*(1-D) or	61,16,80,283
12	GST @ 12%	I=H*12%	7,34,01,634
13	Commensurate demand price	J=H+I	68,50,81,916
14	Excess Collection of Demand or Profiteering Amount	K=G-J	5,14,06,920

From Table-‘A’ and ‘B’ above, it might be deduced that the additional ITC of 6.98% of the turnover should had 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 ITC was required to be passed on by the Respondent to the respective recipients.

- xv) The Respondent had claimed that he had passed on the benefit of Rs. 6,15,24,106/- to the 386 buyers, (out of total 714 buyers) including Applicant No. 1, reflected in the buyers list. The Respondent had submitted email addresses of 324 buyers, to whom the above mentioned benefit was claimed to be passed on. The Respondent had not submitted any documentary proof to substantiate his claim. Also, the Applicant No.1 vide email dated 20.08.2021 submitted that the claim of the Respondent of passing on of benefit of Rs. 1,86,112/- was false and wrong. The Applicant No. 1 further submitted that the Respondent had raised a demand letter dated 20.12.2019 of Rs. 30,17,729/- and another demand letter dated 23.07.2020 of Rs. 33,88,124/- by adding other charges viz. interest on delayed payment, farmer compensation and delay fit out period, which were not applicable on his demand.
- xvi) Further to verify the claim of the Respondent, with respect to other buyers, the DGAP had sent emails dated 17.08.2021 to 324 buyers (whose email addresses were provided by the Respondent). In

response to these 324 emails, 23 home buyers had denied the receipt of any benefit. One buyer had accepted the receipt of ITC benefit of Rs. 3,10,935/-. However, as per Annex-17 of the Report dated 31.08.2021, it was observed that the Respondent had to pass on benefit of Rs. 2,87,179/-, thus, passed on excess credit of Rs. 23,756/- to this buyer. This credit can't be set off against the benefit which ought to have been passed on to other buyers. Thus, this excess amount was not part of benefit further to be passed on by the Respondent. The emails of home buyers was enclosed as Annex-16 of the Report dated 31.08.2021. Thus, the Respondent claim of extending the benefit to his home buyers, was not acceptable. The summary of category-wise ITC benefit that was required to be passed on and the benefit already passed on by the Respondent was furnished in Table-‘C’ below.

Table-‘C’ **(Amount in Rs.)**

Sr. No.	Category of Customers	No. of Units	Saleable Area (in Sqf)	Demand Raised Post GST	Profiteering Amt. as per Annex- 17 of the Report dated 31.08.2021	Benefit claimed to be Passed on by the Respondent	Difference	Remark
A	B	C	D	E	F	G	H=F-G	I
1	Home buyer (Residential)	1	1,185	36,73,500	2,87,179	3,10,935/-	(-) 23,756	Excess Benefit passed on
2	Other Buyers	691	9,10,755	65,39,05,819	5,11,19,741	0	5,11,19,741	Further Benefit to be passed on as per Annex-17 of Report dated 31.08.2021
	Total	692	9,11,940	65,75,79,319	5,14,06,920	3,10,935		

- xvii) From the Table 'B' and Table 'C' above, it was observed that the benefit already passed on by the Respondent was less than what he ought to have passed on by an amount of Rs. 5,11,19,741/- (including Applicant).
- xviii) Thus, on the basis of the aforesaid CENVAT/input tax credit availability pre and post-GST and the details of the amount during the period 01.07.2017 to 31.10.2020, the amount of benefit of ITC that had not been passed on by the Respondent to the recipients comes to Rs.5,11,19,741/- which included GST @12% on the base profiteered amount of Rs.4,56,42,626/-. The home buyer and unit no. wise break-up of this amount was given in Annex-17 of Report dated 31.08.2021. This amount was inclusive of profiteered amount of Rs.1,99,182/- for Applicant mentioned at serial no. 701.
- xix) The Respondent had submitted that he had total of 878 flats and 24 shops in the whole project as on 31.10.2020, out of which 676 flats and 16 shops were booked and 202 flats and 08 shops remained unsold as on 31.10.2020. Accordingly, the buyers' data provided by him was for the live customers as existing on 31.10.2020.
- xx) On the basis of above discussion, it appeared that post-GST, the benefit of additional input tax credit to the tune of 6.98% of the turnover, accrued to the Respondent post-GST and the same was required to be passed on by the Respondent to the Applicant and other recipients for the project "JKG Palm Court". The provisions of Section 171 of the CGST Act, 2017

had been contravened by the Respondent in as much as the additional benefit of ITC @6.98% of the amount collected during the period 01.07.2017 to 31.10.2020 from the buyers, had not been passed on to the 691 recipients including the Applicant. Therefore, the total additional amount of Rs.5,11,19,741/- was required to be returned to the such eligible recipients.

xxi) The Respondent had supplied construction services in the State of Uttar Pradesh.

xxii) As aforementioned, the present investigation computed the profiteering covering the period 01.07.2017 to 31.10.2020. Profiteering, if any, for the period post 31.10.2020 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 Respondent was continuing to avail ITC in respect of the present project.

3. The above Report was carefully considered by the Authority and a Notice dated 04.03.2022 was issued to the Respondent to explain why the Report dated 31.08.2021 furnished by the DGAP should not be accepted and his liability for profiteering in violation of the provisions of Section 171 should not be fixed. The Respondent was directed to file written submissions. The Respondent did not file his written submissions, therefore, the Respondent was again given the opportunity of filing written submissions, if any, vide order sheet dated 29.03.2022. The Respondent requested vide letter dated 11.04.2022 for three weeks' time to file his written submissions. The request of the Respondent was allowed and was again directed to file his

written submissions vide order sheet dated 26.04.2022 and 13.07.2022 but no written submission have been filed by the Respondent.

4. The hearing in the matter was scheduled to be held on 16.08.2022 via video conferencing. No one appeared on behalf of the Respondent and the Applicant. It may be seen from the above that enough opportunities were provided to interested parties to file their submissions and personal hearing, yet, they did not participate in the proceedings. Therefore, the hearing was closed vide order dated 16.08.2022.
5. The Authority has carefully considered the Reports filed by the DGAP, all the submissions and the documents placed on record. It is clear from the plain reading of Section 171(1) that it deals with two situations: - one relating to the passing on the benefit of reduction in the rate of tax and the second pertaining to the passing on the benefit of the ITC. On the issue of reduction in the tax rate, it is apparent from the DGAP's Report that there has been no reduction in the rate of tax in the post-GST period; hence the only issue to be examined is whether there was any net benefit of ITC with the introduction of GST. It is observed from the Report 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 0.80%, whereas, during the GST period (July 2017 to October 2020), it was 7.78% for the project 'JKG Palm Court'. This confirms that during the GST period, the Respondent has benefited from additional ITC to the tune of 6.98% (7.78% - 0.80%) of his turnover for the project 'JKG Palm Court' and the same was required to be passed on to the customers/flat buyers/recipients. The DGAP has calculated the total profiteered amount as Rs. 5,14,06,920/-in respect of the homebuyers/shop buyers/customers/recipients of supply in the impugned Project

including the Applicant No. 1. The Respondent claim of passing on the benefit amounting to Rs. 6,15,24,106/- can not be accepted in absence of any documentary evidence or corroborative documents. This claim of Respondent also need to be rejected in view of the Applicant No. 1 submission that no benefit has been passed on to her by the Respondent.

6. The Authority finds that, neither the Applicant no.1 nor the Respondent has contested the said Report in spite of several opportunities being given to them. They, also, did not attend the personal hearing on the scheduled date. The Authority finds that, the said Report of the DGAP, as reproduced above, has calculated the profiteered amount as per the facts on record and as per the methodology adopted by it in case of other construction projects/ supply of construction services and such methodology has been approved and accepted by this Authority in those cases. The Authority finds no reason to differ from the above-detailed computation of profiteering in the DGAP's Report.
7. The Authority finds that, to verify the claims of the Respondent of having passed on the benefit of ITC to the recipients of supply, the DGAP had sent emails dated 17.08.2021 to only 324 buyers (whose email addresses were provided by the Respondent). In response to these 324 emails, 23 home buyers had denied the receipt of any benefit. Hence, this Authority finds that, such verification is not comprehensive, complete, definite or conclusive and hence cannot be accepted.
8. The Authority finds that the Respondent has profiteered by an amount of Rs. 5,14,06,920/- during the period of investigation i.e. 01.07.2017 to 31.10.2020. The Authority determines an amount of Rs. 5,14,06,920/- (including 12% GST) under section 133(1) as the amount profiteered by the Respondent from his home buyers/shop buyers/customers/recipients of

supply in the impugned Project (as per Annexure-A to this Order), including Applicant No. 1, which shall be refunded by him along with interest @18% thereon, as prescribed, from the date when the above amount was profiteered by him till the date of such payment, as per the provisions of Rule 133 (3) (b) of the GCST Rules 2017. The amount profiteered is **Rs. 1,99,182/-** in respect of Applicant No.1 .

9. This Authority under Rule 133 (3) (a) of the CGST Rules, 2017 orders that the Respondent shall reduce the prices to be realized from the buyers of the flats/shop buyers/customers/recipients of supply commensurate with the benefit of ITC received by him as has been detailed above.
10. The Respondent is also liable to pay interest as applicable on the entire amount profiteered, i.e. Rs. 5,14,06,920/-, for the project 'JKG Palm Court'. Hence the Respondent is directed to also pass on interest @18% to the customers/ flat buyers/ recipients of supply, on the entire amount profiteered, starting from the date from which the above amount was profiteered till the date of passing on/ payment, as per provisions of Rule 133 (3) (b) of the CGST Rules, 2017.
11. The complete list of homebuyers/shop buyers/customers/recipients of supply is attached with this Order, with the details of the amount of benefit of ITC to be passed on along with interest @ 18%, as prescribed, in respect of the project 'JKG Palm Court' of the Respondent as in the said **Annexure-'A'**.
12. This Authority also orders that the profiteered amount of Rs. 5,14,06,920/- for the project 'JKG Palm Court' along with the interest @ 18% from the date of receiving the profiteered amount from the homebuyer/customers/recipients of supply till the date of passing the benefit of ITC shall be paid/passed on by the Respondent within a period of 3 months from the date of

this order failing which it shall be recovered as per the provisions of the CGST Act, 2017.

13. It has also been found that the Respondent has denied the benefit of additional ITC to his customers/buyers/recipients of supply in contravention of the provisions of Section 171(1) of the CGST Act, 2017 and resorted to profiteering and hence, committed an offence under section 171 (3A) of the CGST Act, 2017. As the said provision was inserted only with effect from 1.01.2020, therefore, the Respondent is liable for the imposition of penalty for the period from 01.01.2020 onwards under the provisions of the said Section. Accordingly, a Notice be issued to the Respondent for the said purpose.
14. The concerned jurisdictional CGST/SGST Commissioner is also directed to ensure compliance of this Order. It may be ensured that the benefit of ITC has been passed on to each homebuyer/shop buyer/customer/recipient of supply, as per this Order along with interest @18% as prescribed. In this regard an advertisement of appropriate size to be visible to the public at large may also be published in a minimum of two local newspapers/ vernacular press in Hindi/English/local language with the details i.e., Name of the Builder (Respondent) – **M/s JKG Constructions Pvt. Ltd., B-174, Ist Floor, Yojna Vihar, New Delhi-110092, Project- “JKG Palm Court” (Greater Noida) and amount of profiteering: Rs. 5,14,06,920/-** so that the concerned home buyers/shop buyers/customers/recipients of supply can claim the benefit of ITC if not passed on. Home buyers/shop buyers/customers/recipients of supply may also be informed that the detailed NAA Order is available on Authority’s website **www.naa.gov.in** Contact details of concerned Jurisdictional CGST/SGST who are nodal officers for compliance of the NAA’s order may also be advertised through the said advertisement.

15. The concerned jurisdictional CGST/SGST Commissioner shall also submit a Report regarding the compliance of this Order to the Authority and the DGAP within a period of 4 months from the date of receipt of this order.
16. Further, the DGAP is also directed to monitor the compliance of the order by the concerned jurisdictional CGST/SGST Commissioner.
17. The present investigation has been conducted up to 31.10.2020 only. However, the Respondent is liable to pass on the benefit of ITC which would become available to him till the date of issue of the Completion Certificate. Accordingly, the concerned jurisdictional Commissioner CGST/SGST is directed to ensure that the Respondent passes on the benefit of ITC to the eligible home buyers/shop buyers/customers as per the methodology approved by this Authority in the present case and submit his report to this Authority through the DGAP. The Applicants or any other interested party/person shall also be at liberty to file a complaint against the Respondent before the State Screening Committee in case the remaining benefit of ITC is not passed on to them.
18. Since the Respondent has profited in the instant project, there is every likelihood that he has profited in other projects also under the GSTIN. The Authority has reasons to believe that the Respondent may have resorted to profiteering in the other projects also and hence, it directs the DGAP under Rule 133(5) to investigate all the other projects of the Respondent under the same GST registration which have not yet been investigated from the perspective of Section 171 of the CGST Act, 2017 and submit complete investigation report for all the Projects under this single GST Registration.



19. Further, the Hon'ble High Court of Delhi, vide its Order dated 10.02.2020 in the case of Nestle India Ltd. & Anr. Vs. Union of India has held that:-

"We also observe that prima facie, it appears to us that the limitation of period of six months provided in Rule 133 of the CGST Rules, 2017 within which the authority should make its order from the date of receipt of the report of the Directorate General of Anti Profiteering, appears to be directory in as much as no consequence of non-adherence of the said period of six months is prescribed either in the CGST Act or the rules framed thereunder."

20. A copy of this order be sent to the Applicant No. 1, the Respondent, jurisdictional Commissioners CGST/SGST Greater Noida, the Principal Secretary (Town and Country Planning), Government of Uttar Pradesh as well as Uttar Pradesh RERA free of cost for necessary action.

Encl : **Annexure – 'A' (Pages 1 to 12)**

-Sd/-
(Amand Shah)
Technical Member &
Chairman

Sd/-
(Pramod Kumar Singh)
Technical Member

Sd/-
(Hitesh Shah)
Technical Member

Certified Copy


(Dinesh Meena)
Secretary, NAA

File No. 22011/NAA/JKG/68/2022

Dated: 30.09.2022

Copy To:-

1. M/s JKG Constructions Pvt.Ltd., B-174,1st Floor,Yojana Vihar,
New Delhi-110092

2. Sh. Deepak Garg on behalf of his mother Mrs. Chetna Garg, resident of B.B. Enterprises, D-55, Sector-50, Noida.
3. Chief Commissioner, CGST (Lucknow zone), 7-A, Ashok Marg, Lucknow-226001.
4. Commissioner, Commercial Tax U.P. Commercial Tax Head Office Vibhuti Khand, Gomti Nagar Lucknow – 226010.
5. Principal Secretary, Town And Country Planning Department , Uttar Pradesh, TCG / 1-A-V/5, Vibhuti Khand, Gomti Nagar, Lucknow 226010.
6. Uttar Pradesh Real Estate Regulatory Authority Naveen Bhavan, Rajya Niyojan Sansthan, Kala Kankar House, Old Hyderabad, Lucknow – 226007.
7. Directorate General of Anti-Profiteering, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, New Delhi-110001.
8. Guard File. 