



BEFORE THE COMPETITION COMMISSION OF INDIA

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

I.O. No. : 07/2023
Date of Institution : 28.06.2023
Date of Order : 17.08.2023

In the matter of:

Sh. Ajay Saini, 137, Sakhambari Apartment, Madhurdha, Kolkata, West Bengal-700107.

Applicant

Versus

M/s Lucknow Development Authority, Pradhikaran Bhawan, Viping Khand, Gomti Nagar, Lucknow-226010

Respondent

Coram: -

Smt. Ravneet Kaur, Chairperson

Dr. Sangeeta Verma, Technical Member

Sh. Bhagwant Singh Bishnoi, Member

ORDER

1. The present Report dated 28.06.2023, has been received from the Director General of Anti-Profiteering (DGAP) after a detailed investigation as per the directions passed under Rule 133(4) of the Central Goods and Service Tax (CGST) Rules, 2017 (hereinafter referred as "the Rules") vide I.O. No. 25/2022 dated 30.09.2022 by the National Anti-Profiteering Authority (NAA) in respect of project "Kritika & Swati Apartment" of M/s Lucknow Development Authority (Respondent).

2. The DGAP vide his Report dated 28.06.2023 has inter-alia submitted the following: -
 - i) That the Respondent vide letters and emails submitted the following documents/information:-
 - a. Revised Homebuyers list.

 - b. Declaration duly signed by the Finance Controller, Lucknow Development Authority declaring that the benefit of input tax credit (ITC) has been passed on to all the homebuyers.

 - ii) That the Respondent had provided revised homebuyers list of 719 homebuyers for the said project "Kritika and Swati Apartment" along with other details such as customers contact details, date of booking, saleable area, total agreement value of each unit, demand raised and advance received and benefit of ITC passed on to the homebuyers.

Further, the Respondent vide his submissions dated 18.05.2023 had

claimed that he had calculated and passed on benefit of input tax credit amounting to Rs. 7,47,31,901/- to all the 719 homebuyers and an undertaking was given by Finance Controller of the Respondent that the ITC accrued to the Respondents had been passed on to the homebuyers by means of reduction in demands raised to the homebuyers. It was further observed from the submissions of the Respondent that he had charged 12% GST on the base prices of the units and then raised the final demands and adjusted the amount of benefit of ITC claimed to have been passed on to the buyers.

- iii) That the DGAP has re-calculated the profiteered amount on the basis of revised homebuyers list submitted by the Respondent. The calculation of profiteered amount has been furnished in the Table-'A' below:-

Table-'A'

Sr. No.	Particulars		No. of buyers	Area (Sq. Meters)
1	Total No. of sold units in Swati Apartment Project	A	421	25242.99
2	Total No. of sold units in Kritika Apartment Project	B	298	13055.74
3	Total Sold Units (A+B)	C	719	
4	Total Sold Area (A+B) as per Homebuyers list	D		38298.64
5	Total Input Tax Credit received by the Respondent after introduction of GST for the project (as per Respondent's submissions)	E		Rs. 8,98,82,000/-

6	Total Area of the Project (as per Respondent's submissions)	F	46062.77
7	Profiteered amount	$G=D*E/F$	Rs. 7,47,31,901/-
8	GST @12%	$H=G*12\%$ GST	Rs. 89,67,828/-
9	Total Profiteered amount including GST	$I=G+H$	Rs. 8,36,99,729/-

From Table-'A' above it was evident that the benefit of input tax credit that was needed to be passed on by the Respondent to 719 homebuyers amounted to Rs. 8,36,99,729/- which included 12% GST on the profiteered amount of Rs. 7,47,31,901/-.

- iv) That the DGAP in his earlier Investigation report dated 06.10.2021, could not verify the claim made by the Respondent that he had passed on benefit of input tax credit to all the 719 homebuyers, amounting to Rs. 7,09,81,848/- out of the total benefit of ITC of Rs. 7,47,31,900.84/- which the Respondent was required to pass on as the Respondent failed to provide the required details of the homebuyers in the specified format, including e-mail ids, contact details, addresses and demands raised to the homebuyers. Considering that the Respondent was a Government body and non-profit making organization, the DGAP took into account his claim regarding the passed on benefit of Input Tax Credit and reported that the Respondent was to pass on balance benefit of ITC of Rs. 37,50,052.03/-.

v) That the Respondent in his revised submissions has now furnished the necessary details of all 719 homebuyers, including their addresses, demands raised and amount received. Further, the Respondent vide the above submissions has claimed that he had passed on the benefit of ITC, of Rs. 7,47,31,865/- to all the 719 home buyers, which has accrued to him after implementation of GST. The Respondent also furnished details of home buyers and benefit of ITC passed on to the individual home buyers. Therefore, in order to verify the claim of the Respondent, letters were issued to all the 719 home buyers. Reply from only 161 homebuyers had been received out of which 52 had confirmed that the benefit of additional Input Tax Credit had been received, 30 had partially confirmed that the benefit of additional Input Tax Credit had been received, 79 had denied that benefit of Input Tax Credit had been received by them, and 558 did not reply. Hence, the contention of the Respondent that benefit to all the said 719 homebuyers had been passed on could not be accepted. A summary of benefit of input tax credit required to be passed on and the input tax credit benefit claimed to have been passed on by the Respondent to all the 719 home buyers, has been furnished in Table- 'B' below: -

Table-'B'

Sr. No.	Category of Customers	No. of	Area (in sq. mtrs.)	Total Profiteered	Benefit of ITC claimed to	Further benefit	Remark
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		Units		amount (including GST)	have been passed on by the Respondent	required to be passed on	
A	B	C	D	E	F	G=E-F	H
1	Confirmed Buyers (Swati Apartment)	24	1,417	30,95,711	27,64,027	3,31,684	Further benefit required to be passed on
2	Confirmed buyers (Kritika Apartment)	28	1,227	26,81,349	23,95,004	2,86,345	Further benefit required to be passed on
3	Buyers who have confirmed partial passing on of benefit of ITC (Swati Apartment)	21	1,265	27,64,331	24,68,153	2,96,178	Further benefit required to be passed on
4	Buyers who have confirmed partial passing on of benefit of ITC (Kritika Apartment)	9	394	8,61,198	7,69,477	91,721	Further benefit required to be passed on
5	Denied Buyers (Swati Apartment)	50	3,014	65,86,375	58,78,331	65,86,375	Further benefit required to be passed on
6	Denied Buyers (Kritika Apartment)	29	1,271	27,76,679	24,80,901	27,76,679	Further benefit required to be passed on
7	No reply received (Swati Apartment)	326	19,548	4,27,20,657	3,81,31,638	4,27,20,657	Further benefit required to be passed on
8	No reply received (Kritika Apartment)	232	10,164	2,22,13,429	1,98,44,334	2,22,13,429	Further benefit required to be passed on
Total		719	38,299	8,36,99,729	7,47,31,865	7,53,03,068	

From the above Table 'B', it was observed that the benefit claimed to have been passed on by the Respondent was less than what should have been passed on to 719 homebuyers (Sr.1 to 8 of above table) by an amount of Rs. 7,53,03,068/-.

- vi) That the Respondent had realized an additional amount to the tune of Rs. 8,36,99,729/- inclusive of 12% GST which had not been passed on to said 719 recipients. The Respondent had passed on the ITC benefit of Rs. 83,96,661/- to 82 homebuyers as mentioned at Sr. No. 1 to 4 of the Table- 'B'. Further, it was observed that the Respondent was yet to pass on an additional amount of Rs. 7,53,03,068/- as mentioned at Sr.No.1 to 8 of the Table-'B' to the 719 flat buyers. These 719 flat buyers were identifiable as per the documents provided by the Respondent, giving the names along with units allotted to such recipients.
- vii) That Section 171(1) of the CGST Act, 2017, had been contravened by the Respondent in the present case.

3. The Commission has carefully considered the Report of the DGAP and the other material placed on record and finds that the DGAP vide his report dated 06.10.2021 calculated profiteered amount to the tune of Rs. 37, 50,052.03/- plus 12% GST. It is also revealed that the DGAP in his earlier report dated 06.10.2021 had accepted the Respondent's claim regarding passing on benefit of input tax credit to the homebuyers without verification to the tune of Rs. 7,09,81,848.82/- . Table 'A' of the previous report dated 06.10.2021 is reproduced as follows:-

Sr. No	Particulars	No. of buyers	Area	Benefit passed on by the Respondent
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1.	No. of buyers for Swati Apartment	A	421	25242.90	46780041.64/-
2.	No. of buyers for Kritika Apartment	B	298	13055.74	24201807.18/-
3.	Total benefit passed by the Respondent	C	7,09,81,848.82/-		
4.	Total Area of the Project	D	46062.77		
5.	Total ITC received by the Respondent after introduction of GST	E	8,98,82,000/-		
6.	Benefit of ITC to be passed by the Respondent	$F = \{(A+B) * (E) / D\}$		7,47,31,900.84/-	
7.	Further Benefit to be passed by the Respondent	G =		37,50,052.03/-	

Further, the DGAP vide his present report dated 28.06.2023 has calculated total profiteered amount to the tune of Rs. 8,36,99,729/- (inclusive of 12% GST). Table 'A' of the present report dated 28.06.2023 is as follows:-

Sr. No.	Particulars		No. of buyers	Area (Sq. Meters)
1	Total No. of sold units in Swati Apartment	A	421	25242.99
2	Total No. of sold units in Kritika Apartment	B	298	13055.74
3	Total Sold Unit (A+B)	C	719	
4	Total Sold Area (A+B) as per Homebuyer list	D		38298.64
5	Total Input Tax Credit received by the Respondent after introduction of GST for the project (as per Respondent's submission)	E		Rs. 8,98,82,000/-
6	Total Area of the Project (as per Respondent's submission)	F		46062.77
7	Profiteered amount	$G = D * E / F$		Rs. 7,47,31,901/-
8	GST @12%	$H = G * 12\% \text{ GST}$		Rs. 89,67,828/-
9	Total Profiteered amount including GST	$I = G + H$		Rs. 8,36,99,729/-

Further, the DGAP in his present report dated 28.06.2023 has verified vide letters sent to 719 buyers that the Respondent had passed on benefit of ITC of Rs. 83,96,661/- to 82 homebuyers. Therefore, the DGAP vide report dated 28.06.2023 has calculated further benefit of ITC to be passed on to the homebuyers to the tune of Rs. 7,53,03,068/- (inclusive of 12% GST).

4. The Commission has carefully considered both the Reports of the DGAP and finds that the DGAP in his earlier report dated 06.10.2021 has calculated the profiteered amount excluding 12% GST to the tune of Rs. 37,50,052/- vide Table 'A' of the above report. Whereas, the DGAP in the present report dated 28.06.2023 vide Table 'A' has calculated the total profiteered amount to the tune of Rs. 8,36,99,729/- including 12% GST, and further benefit of ITC to be passed on to the homebuyers as Rs. 7,53,03,068/- (inclusive of 12% GST). There is huge difference in the figures of profiteered amount calculated by the DGAP vide reports dated 06.10.2021 and 28.06.2023 which needs to be clarified by the DGAP how this difference has arisen.
5. Therefore, the DGAP is directed to further investigate the matter under Rule 133(4) of the Rules and submit fresh Report clearly recording his findings on the wide difference between the figures of profiteered amount of Rs. 37,50,052.03/- computed vide report dated 06.10.2021 and the amount of Rs. 7,53,03,068/- computed vide report dated 28.06.2023.


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

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(Jyoti Jindgar Bhanot)
Secretary, CCI

F.No. 22011/NAA/Lucknow Development/63/2021/Part II / 603-606 Dated : 18.08.2023

Copy to:-

1. Sh. Ajay Saini, 137, Sakhambari Apartment, Madhurdha, Kolkata, West Bengal-700107.
2. M/s Lucknow Development Authority, Pradhikaran Bhawan, Viping Khand, Gomti Nagar, Lucknow-226010
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.