



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

Case No.	04/2023
Date of Institution	13.01.2023
Date of Order	17.07.2023

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

2. M/s JKG Construction Pvt. Ltd., B-174, 1st Floor, Yojna Vihar, New Delhi-10092.

Respondent

Quorum:-

Mrs. Ravneet Kaur, Chairperson,
Mrs. Sangeeta Verma, Technical Member.
Sh. Bhagwant Singh Bishnoi, Member,

ORDER

1. The present Report dated 13.02.2023, has been received from the Director General of Anti-Profiteering (DGAP) after an investigation as per the directions passed under Rule 133(5) of the Central Goods and Service Tax

(CGST) Rules, 2017 vide Order No. 80/2022 dated 30.09.2022 by the National Anti-profiteering Authority (NAA) in the case of M/s JKG Construction Pvt. Ltd. (Respondent) in respect of the projects other than 'JKG Palm Court'.

2. The DGAP vide his first Investigation Report dated 31.08.2021 had reported that the Respondent had profiteered an amount of Rs. 5,14,06,920/- while executing the 'JKG Palm Court' project which was required to be passed on to the flat buyers.
3. The NAA vide Order No. 80/2022 dated 30.09.2022 had confirmed the profiteered amount of Rs. 5,14,06,920/- as the benefit of ITC not passed on to the recipients by the Respondent during the period from 01.07.2017 to 31.10.2020 and ordered the Respondent to pass on the benefit.
4. Further, vide Para 18 of the aforesaid Order, the NAA directed the DGAP in terms of Rule 133(5) of the CGST Rules, 2017, to investigate profiteering in relation to projects other than project "JKG Palm Court", being executed by the Respondent, if any, under the provisions of Section 171 of the CGST Act, 2017. The contents of para 18 are reproduced below:

"18. Since the Respondent has profiteered in the instant project, there is every likely hood that he has profiteered 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".

5. In pursuance of the above direction the DGAP vide his Report dated 13.02.2023 has inter-alia submitted the following:-
- i) That a Notice under Rule 129 of the Central Goods and Services Tax Rules, 2017 was issued on 19.10.2022, calling upon the Respondent to reply as to whether he admitted that the benefit of input tax credit had not been passed on to the customers of the projects other than "JKG Palm Court", by way of commensurate reduction in prices 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 the supporting documents.
 - ii) The period covered by the current investigation was from 01.07.2017 to 30.09.2022.
 - iii) In response to the Notice dated 19.10.2022, the Respondent replied vide letter dated 02.11.2022 that he had executed only one housing Project JKG Palm Court and he was not executing any other project.
 - iv) In order to verify Respondent's claim that he had not undertaken any project other than "JKG Palm Court", the details of Respondent's projects registered with UP Real Estate Regulatory Authority (RERA) were checked online by the DGAP and it was observed that the Respondent has taken RERA registration of 2 phases covering Towers A, B, C & D under the JKG Palm Court project. Both the phases had already been covered under the NAA's Order No. 80/2022 dated 30.09.2022. Further, no project other than the JKG Palm Court project was registered with RERA. A list of the registrations in respect of the Respondent as seen from the UPRERA website is as follows:

Sl. No.	Project Name	Tower	Promoter Name	RERA Registration No.
1	JKG Palm Court Phase I	A & B	JKG Construction Pvt. Ltd.	UPRERAPRJ6966
2	JKG Palm Court Phase II	C & D	JKG Construction Pvt. Ltd.	UPRERAPRJ7088

- v) Further, the DGAP had sent a letter vide F. No. 22011/API/44/2022/2457 dated 09.11.2022 to the Commissioner of State Tax, Lucknow for ascertaining whether the Respondent had executed any projects other than the project "JKG Palm Court". In response, the Joint Commissioner (Anti-profiteering) State Tax, Lucknow intimated vide letter dated 30.01.2023 that the Respondent was not executing any project other than the project "JKG Palm Court".
- vi) The DGAP has concluded by stating that the Respondent has not undertaken any other project except project "JKG Palm Court" which has already been investigated by the DGAP and profiteering determined vide NAA Order No. 80/2022 dated 30.09.2022. Therefore, Section 171(1) of the Central Goods and Services Tax Act, 2017 requiring that "*any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices*", is **not applicable** in the present case.
6. The Commission has carefully considered the Report of the DGAP and the other material placed on record and finds that the DGAP, in pursuance to the Order No. 80/2022 dated 30.09.2022, has investigated the matter pertaining to the other projects executed by the Respondent in terms of Section 171 of the CGST Act, 2017 and the Rules made there under so as to determine whether there has been any profiteering by the Respondent

and found that no other project has been executed by the Respondent except the project "JKG Palm Court", profiteering in respect of which has already been determined by the NAA vide its order dated 30.09.2022.

7. The above fact has also been corroborated from the website of the UP RERA as well as the reply of the Commissioner State Tax UP as per the report of the DGAP.
8. In view of above facts, the Commission finds that the provisions of Section 171 of the CGST Act, 2017 are not attracted in the case of the other projects of the Respondent and therefore the proceedings are accordingly dropped against the Respondent.
9. A copy of this order be sent to the Respondent and the DGAP free of cost. File of the case be consigned after completion.

Sd/-
(Ravneet Kaur)
Chairperson

Sd/-
(Bhagwant Singh Bishnoi)
Member

Sd/-
(Sangeeta Verma)
Member

Certified Copy


(Jyoti Jindgar Bhanot)
Secretary, CCI

F. No. M/AP/11/JKG-OP/2023-Sectt. / 380-382

Dated: 17/07/2023

Copy To: -

1. M/s JKG Construction Pvt. Ltd., B-174, 1st Floor, Yojna Vihar, New Delhi-110092.
2. The Director General of Anti-Profitteering, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, New Delhi-110001.
3. Guard File.