

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

Case No. 32/2020
Date of Institution 10.10.2019
Date of Order 18.06.2020

In the matter of:

1. Shri Kamal Nayan Singhania, Flat No. B-503, Rajatha Greens, 5/1B, Nagawara Main Road, Bangalore-45.
2. 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.

Applicants

Versus

1. M/s Elegant Properties, 02, Elegant Desire, First Floor, No. 1 Coles Road, Frazer Town, Bangalore -560045.

Respondent

Quorum:-

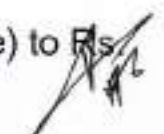
1. Dr. B. N. Sharma, Chairman
2. Sh. J. C. Chauhan, Technical Member
3. Sh. Amand Shah, Technical Member



Present:-

- 1) None for Applicant No. 1.
- 2) None for the Director-General of Anti-Profiteering i.e. Applicant No. 2.
- 3) None for the Respondent.

ORDER

1. This Report dated 10.10.2019 has been received from the Applicant No. 2 i.e. the Director-General of Anti-Profiteering (DGAP), under Rule 133 (4) of the Central Goods & Services Tax (CGST) Rules, 2017. The brief facts of the present case are that a reference was received from the Standing Committee on Anti-profiteering on 30.08.2018, to conduct a detailed investigation in respect of an application dated 29.05.2018 filed by the Applicant No. 1 which was originally examined by the Screening Committee of Karnataka under Rule 128 (2) of the above Rules, alleging profiteering by the Respondent in respect of the purchase of a flat by the Applicant No. 1 in the project "Elegant Berkeley" situated at Hennur Village, Kasaba Hobli, BBMP Ward No. 30, Bangalore North. In the said application the Applicant No. 1 alleged that the Respondent had not provided any tax invoice for the supply of construction service, charged higher GST @ 18% instead of 12% w.e.f. 01.07.2017 and also Service Tax was charged after GST came into force. Further, the Applicant alleged that the Respondent had raised the cost of the flat from Rs. 99,00,000 (Agreement Value) to Rs. 

1,05,48,000/- after implementation of GST by extracting Service Tax on the already paid amount in the pre-GST era and also charged GST @ 18% (instead of 12%) on the balance amount after the introduction of GST. The said application was examined by the Applicant No. 2 and the Investigation Report dated 04.10.2018 under Rule 129(6) of the Rules, 2017 was submitted to the Authority.

2. The DGAP vide the said Report dated 04.10.2018 concluded that the allegation in the application dated 28.05.2018 related to excess charging of Service Tax and GST by the Respondent which could not be redressed through the provisions of Section 171 of the Central Goods and Services Tax Act, 2017. However, this Authority, vide its letter dated 15.11.2018, referred the matter back to the DGAP under Rule 133(4) of the Rules, to conduct investigation after observing due formalities and also incorporating the observations dated 07.11.2018, made by the Screening Committee of Karnataka on the said report dated 04.10.2018.
3. The DGAP on receipt of the above reference from this Authority decided to collect the evidence necessary to determine whether the benefit of the input tax credit has been passed on by the Respondent to the Applicant No. 1 in respect of the construction service supplied by the Respondent and a Notice under Rule 129 (3) of the Rules was issued by the DGAP on 04.12.2018 to submit reply as to the whether the ITC benefit was passed on to the recipients and also asked the Respondent to suo-moto determine the quantum of benefit.

which was not passed on. The Respondent as well as the above Applicant was allowed to inspect the evidence submitted by the other party however both of them did not avail the same.

4. The DGAP claimed that the Respondent had also not supplied the complete information sought by him by stating that he was not in a position to submit the desired information as all the relevant documents had been seized by the Commercial Taxes Department (Enforcement), South Zone-02 Bengaluru. Accordingly, the DGAP asked the jurisdictional Authorities to permit the Respondent to access to the seized documents, however, vide letter 10.04.2019 and 29.04.2019, the Additional Commissioner of Commercial Taxes (Enforcement), South Zone, Bengaluru-47 informed that he had not seized any documents or books of accounts from the business premises of the Respondent and has obtained only the photocopies of the documents required for verification. Hence repeated summons were issued against him under Section 70 of the CGST Act, 2017 read with Rule 132 of the CGST Rules, 2017 to appear and submit the desired information/documents.
5. The DGAP further submitted that when **after repeated letters and summons the Respondent failed to submit the complete documents/information** he decided to depute a team of officers to visit the premises of the Respondent to collect the requisite documents/ records/ information and accordingly a team of one Assistant Director and one Superintendent of the office of DGAP visited the premises of the Respondent on 27.05.2019 along with an Inspector of the

jurisdictional CGST Commissionerate (Bengaluru East). The Respondent was also intimated about the date of the visit by a letter dated 21.05.2019 which was duly acknowledged by him. During the visit, all the requisite documents/information were collected from the Respondent and also statement of sh. B. Rajashekar, partner, Respondent had been recorded on 27.05.2019. However, copies of purchase bills were not readily available with the Respondent which were assured to be sent over email within three working days.

6. The Respondent submitted his replies to the DGAP vide letters/e-mails/statement dated 11.12.2018, 19.12.2018, 27.12.2018, 05.03.2019, 02.04.2019, 23.04.2019, 23.05.2019, 24.05.2019, 25.05.2019, 27.05.2019, 28.05.2019, 29.05.2019, 30.05.2019, 31.05.2019, 03.06.2019, 04.06.2019, 07.06.2019, 08.06.2019, and 10.06.2019. The replies of the Respondent are summed up as follows:-

(a) That he was a partnership firm, having two partners namely
i) B. Rajashekhar and ii) Smt. Vijaya Chamundi, having single GST registration. He was engaged in Civil Works and Contracts for Construction and sale of Residential Flats under the Joint Development Agreements (JDA).

(b) That the project "Elegant Berkeley" was a joint development project (JDP) where MOU was signed on 14.09.2011 to develop the project. The JDA was signed on 29.04.2015 after the approval for the construction of the project was obtained on 04.02.2013. The project consisted of 36

Residential Units of which the Respondent's share was 20 Residential units all of which have been sold and he had charged GST @ 18% earlier from his customers in the absence of clear-cut directions and then he was charging GST @ 12% and was in the process of refunding the excess amount charged from the Applicant No. 1 and other customers.

- (c) That he was not in a position to furnish the requisite information to this office since all the records had been taken by DCCT- (Enforcement). The Respondent further submitted that he had taken the GST registration on 03.04.2018 and thus not filed the GSTR-1 and GSTR-3B for the period from July 2017 to March 2018.
- (d) That the project "Elegant Berkeley" was completed in December 2016, there was no major work pending, and only minor finishing like painting and cleaning took place post GST on which he had availed ITC.
- (e) That ST-3 returns have not been filed by him and thus he has received a Show Cause Notice dated 20.04.2018 from the Office of the Principal Commissioner of Central Tax, GST Commissionerate- Bengaluru East for an amount of Rs. 1,23,26,395/-.
- (f) Further, in the statement recorded on 27.05.2019, the Respondent stated that he was engaged in civil works and contracts for construction and sale of Residential Flats under the Joint Development Agreements. He entered into

agreements with the buyers of flats and receive advance before completion of construction. As of 1st July 2017, he was undertaking construction of 11 projects. Further, he had not introduced or launched any new projects after GST came into force. He was maintaining his books of accounts by electronic means in Tally software and classified accounts for all the projects as separate cost centers.

(g) That the project "Elegant Barkley" was a Joint Development Project where Memorandum of Understanding was entered with M/s. Amala Engineering Co. (Pvt.) Ltd. (hereinafter referred to as "the Land Owner") on 14-09-2011 to develop the project and the plan got approved on 04-02-2013 and he had started construction of the project in January 2013 (excavation). He entered into the Joint Development Agreement on 29-04-2015. As per MoU and JDA entered with the landowner, he was required to construct a total of 36 Residential Flats, one Club, and one Recreational Centre. He owned right to sell 20 out of total 36 Residential flats and he had already sold all the 20 flats of his share. Further, he stated that he had neither received nor applied for Occupation Certificate or Completion Certificate as it was not mandatory to get such a Certificate for a small project. It was mandatory for high rise buildings only. He also furnished the Account statement of all the 20 Residential flats buyers in the project "Elegant Barkley". As per the agreement entered with the buyers, he had received the consideration from the prospective buyers of flats and gave the receipts. He also

submitted that he did not raise any tax invoice towards the money received.

(h) That he had furnished the summary ledger of Input VAT and GST for the period from 01.04.2016 till 31.10.2018 for the project Elegant Barkley. As the Project was completed in December 2016, there was no major work pending and only minor finishing work like painting and cleaning had taken place after the introduction of GST, in respect of which, he had availed ITC.

(i) That he had received the Notice from office of Assistant Commissioner of Commercial Taxes, Bengaluru for cancellation of registration for the reason of not furnishing GST returns for a continuous period of six months. He also submitted that a survey was also conducted at his premise on 25.03.2019 by the Deputy Commissioner of Income Tax, Circle- 1(2)(1), Bengaluru under Section 133A of the Income Tax Act, 1961 and he impounded the books of account.

7. The DGAP has covered the period from 01.07.2017 to 31.10.2018 for investigation. The Respondent, vide his aforementioned letters and e-mails, has submitted the following documents/information:

(a) Copies of GSTR-1 Returns for the period from April 2018 to March 2019.

a. Copies of GSTR-3B Returns for the period from April 2018 to March 2019.

- (b) Copies of VAT returns for the period from April 2016 to June 2017.
 - (c) Copies of all the demand letters and the sale agreement/ contract issued in the name of the Applicant.
 - (d) Copy of Joint Development Agreement dated 29.04.2015 entered with the Land Owner.
 - (e) Details of applicable tax rates, pre-GST, and post-GST.
 - (f) Copy of Balance Sheet (including all annexures and profit & loss account for FY 2016-17 & FY 2017-18.
 - (g) Copy of Electronic Credit Ledger for the period 01.04.2018 to 31.12.2018.
 - (h) CENVAT Credit/Input Tax Credit ledgers for the period from April 2016 to March 2019.
 - (i) List of home buyers in the project "Berkeley".
 - (j) Copies of Purchase invoices during the period from July 2017 to October 2018.
 - (k) Copies of Show Cause Notices received from Service Tax, Commercial Taxes, SGST (Jurisdictional), and Income Tax Authorities.
 - (l) Copy of Bank Statement for the period 01.07.2017 to 31.12.2018.
8. The DGAP has submitted that the Respondent, vide letter dated 02.04.2019, submitted a copy of Sale agreement dated 04.11.2014, demand letters and payment recipients for the sale of flat no. T2-First Floor to the Applicant, measuring 1,972 square feet, at the basic sale price of Rs. 5,020/- per square feet. As the Respondent had not raised any tax invoice and

shown amount received from the Applicant as Loan, the details of amounts and taxes paid by the Applicant No. 1 to the Respondent are furnished in Table-'A' below.

Table-'A'

(Amount in Rs.)

S. No.	Payment Date	Voucher No.	Cheque No.	BSP
1	21.07.2014	214, 215 & 216	NEFT	5,00,000
2	22.08.2014	311	NEFT	2,50,000
3	23.08.2014	313	NEFT	2,50,000
4	25.08.2014	314 & 315	NEFT	5,00,000
5	26.08.2014	319	NEFT	2,50,000
6	27.08.2014	322	NEFT	2,50,000
7	13.12.2014	543	065819	64,00,000
8	30.12.2017	236	003824	13,29,000
9	04.01.2018	233	832144	72,000
10	04.01.2018 (Towards Service Tax)	234	832145	3,78,000
11	04.01.2018 (Towards GST)	235	832146	2,70,000
12	TDS @ 1% of Basic			99,000
Total				1,05,48,000

9. The DGAP further observed that the Respondent have collected Rs. 99,00,000/- towards the basic cost of the flats and balance amount of Rs. 6,48,000 representing Service Tax and GST from the Applicant No. 1. The Respondent also informed that he will be refunding excess GST amounting to Rs. 90,000 collected from the Applicant No. 1 [(Rs. 15,00,000*18%) less (Rs. 15,00,000*12%)]. However, as per the books of account of the Respondent, he had transferred the whole amount of Rs. 1,04,49,000 (Net of TDS) to Sales A/c vide journal voucher no. 2043 dated 16.01.2018 which showed that the Respondent had not transferred Rs. 6,48,000 into the output tax liability ledgers and consequently not discharged his liability and thus contravened the provisions of Section 76 of the Central Goods

and Services Tax Act, 2017 read with relevant Rules and Section 73A of the Finance Act, 1994 read with Section 174 of the Central Goods and Services Tax Act, 2017. The same modality was being followed with other recipients also.

10. The DGAP further informed that the computation of profiteering of 2.65%, made by Karnataka Screening Committee in the letter dated 07.11.2018 was examined by him and it was found that the committee had compared the total tax incidence of 14.65% in the Pre-GST period (Service Tax @15% on 30% of the apartment cost + VAT @ 14.50% on 70% of the apartment cost) with the effective GST rate of 12% in the post-GST period, to arrive at the figure of 2.65%, as the benefit of reduction in the tax rate. However, this finding of the Committee was incorrect as the basis for computation of Service Tax and VAT were different as Service Tax of 4.50% was on the total apartment cost (including land value) but VAT of 14.50% was on 70% of the value excluding land value (not the apartment cost). Therefore, the conclusion of the Karnataka Screening Committee that the rate of tax was reduced from 14.65% to 12%, was not correct. Instead, the effective GST rate increased to 12% (GST @18% along with 1/3rd abatement for land value) from the aggregate effective rate of tax in pre-GST regime of 11.27% [i.e. Service Tax @ 15% on 30% of total apartment cost (including land value) + VAT @ 14.50% on 70% on 2/3rd Value of total apartment cost (including land value) considering 1/3rd abatement for land value].

11. He also informed that para 5 of Schedule-III of the Central Goods and Services Tax Act, 2017 (Activities or Transactions which shall be treated neither as a supply of goods nor a supply of services) 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 Central Goods and Services Tax 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 has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier*". Thus, the input tax credit pertaining to the residential units which are under construction but not sold is a provisional input tax credit which may 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 Central Goods and Services Tax Act, 2017, which read as under:

Section 17 (2) "Where the goods or services or both are 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 exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies".

Section 17 (3) "The value of exempt supply under sub-section (2) shall be such as may be prescribed and shall include supplies on which the recipient is 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 input tax credit pertaining to the unsold units may 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 input tax credit available to him post-GST. The Respondent submitted that out of a total of 36 flats, his share was only 20 flats and he had sold all those 20 flats. However, Respondent had not submitted any of the details of the Land owner's share.

12. He also informed that in terms of Rule 4 of the Cenvat Credit Rules, 2004 read with notification No. 06/2015 C.E. (NT) dated 01.03.2018, the provider of output service shall not take CENVAT credit after one year of the date of issuance of any of the documents specified in sub-rule (1) of Rule 9. As the Respondent had not filed any ST-3 Returns during the period from April 2016 to June 2017 (even before this period), no input tax credit could be claimed by him for discharging to his output tax liability. For the reason, the Office of the Principal Commissioner of Central Tax, GST Commissionerate-

Bengaluru East vide it's Show Cause Notice dated 20.04.2018 has proposed to disallow the Cenvat Credit shown by the Respondent.

13. He further reported that regarding the allegation of profiteering before 01.07.2017, i.e., before the GST was introduced, the Respondent was eligible to avail input tax credit of VAT paid on inputs only (no credit was available in respect of Central Excise duty paid on the inputs) and also Credit of Service Tax paid on input services was not available to the Respondent for the reason mentioned above. Further, post-GST, the Respondent could avail input tax credit of GST paid on all the inputs and the input services including the sub-contracts. From the information submitted by the Respondent for the period from April 2016 to October 2018, the details of the input tax credit availed by him, his turnover from the project "Elegant Berkeley" the ratio of input tax credit to turnover, during the pre-GST (April 2016 to June 2017) and post-GST (July 2017 to October 2018) periods, are furnished in Table-'B' below.

Table-'B'

(Amount in Rs.)

S. No.	Particulars	Pre-GST (April 2016 to June 2017)	Post-GST (July 2017 to October 2018)	Remark
1	CENVAT of Service Tax Paid on Input Services used (A)	-	-	Rule 4 of the Cenvat Credit Rules, 2004
2	Input Tax Credit of VAT Paid on Purchase of Inputs (B)	6,86,241	-	As per Ledger furnished by the Respondent
3	Input Tax Credit of GST Availed (C)	-	6,08,920	As per books of accounts furnished by the Respondent
4	Total CENVAT/Input Tax Credit Available (D)= (A+B) or (C)	6,86,241	6,08,920	

5	Total Saleable Super Built-up Area (in SQF) (E)	61,232	61,232	As per JDA dated 29.04.2015
6	Super Built-up Area share of Land Owner (in SQF) (F)	27,414	27,414	As per JDA dated 29.04.2015
7	Input Tax Credit pertaining to the Land Owner (G)= (D*F/E)*	3,07,235*	2,72,618*	ITC pertaining to the Landowner' share.*
8	Input Tax Credit pertaining to the Respondent (H)= (D)-(G)	3,79,006	3,36,302	ITC pertaining to the Respondent' share.
9	Turnover for Residential Flats as per Home Buyers List (I)	2,05,58,000	1,38,16,899	As per books of accounts furnished by the Respondent
10	Total Saleable Super Built-up Area (in SQF) of the Respondent (J)= (E)-(F)	33,818	33,818	
11	Total Sold Super Built-up Area (in SQF) relevant to turnover (K)	9,076	19,552	As per books of accounts furnished by the Respondent
12	Relevant ITC [(L)= (H)*(K)/(J)]	1,01,717	1,94,434	
	Ratio of Input Tax Credit Post-GST [(M)=(L)/(I)]	0.49%	1.41%	

Note: Respondent has informed that he has neither raised any invoice to Land Owner nor paid Service Tax/GST on the construction value pertaining to the area of Landowner and also not passed on any of the benefit of input tax credit to them.

14. He further claimed that from the Table-'B', it was clear that the input tax credit as a percentage of the turnover that was available to the Respondent during the pre-GST period (April 2016 to June 2017) was 0.49% and during the post-GST period (July 2017 to October 2018), it was 1.41%. This confirmed that post-GST, the Respondent has benefited from additional input tax credit to the tune of 0.92% [1.41 % (-) 0.49%] of the turnover. Accordingly, the profiteering has been examined by comparing the applicable tax rate and input tax credit available in the pre-GST period (April 2016 to June 2017) when Service Tax @4.5% and VAT@6.77% (approx.) were payable (total tax rate of 11.27% approx.) with the post-GST period (July 2017 to October 2018) when the effective GST rate was 12% (GST @18% along with 1/3rd abatement for land value) on construction service, levied vide Notification No.11/2017-Central Tax (Rate), dated 28.06.2017. Accordingly, on the basis the figures contained in table-'B' above, the comparative figures

of the ratio of input tax credit 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) during the post-GST period, are tabulated in Table-'C' below.

Table-'C' (Amount in Rs.)

S. No.	Particulars		Post-GST
1	Period	A	July 2017 to October 2018
2	Output GST rate (%)	B	12%
3	The ratio of CENVAT credit/ Input Tax Credit to Total Turnover as per table - 'B' above (%)	C	1.41%
4	Increase in input tax credit availed post-GST (%)	D= 1.41% less 0.49%	0.92%
5	Analysis of Increase in input tax credit:		
6	Base Price raised/collected from July 2017 to October 2018 (Rs.)	E	1,38,16,899
7	GST raised/collected over Base Price (Rs.)	F= E*B	16,58,028
8	Total Demand raised/collected	G=E+F	1,54,74,927
9	Recalibrated Base Price	H= E*(1-D) or 99.08% of E	1,36,89,784
10	GST @12%	I = H* B	16,42,774
11	Commensurate demand price	J = H+I	1,53,32,558
12	Excess Collection of Demand or Profiteering Amount	K= G-J	1,42,369

15.He further claimed that from Table-'C' above, it could be deduced that the additional input tax credit of 0.92% of the turnover should have resulted in the commensurate reduction in the base price as well as cum-tax price. Therefore, in terms of Section 171 of the Central Goods and Services Tax Act, 2017, the benefit of such additional input tax credit was required to be passed on by the Respondent to the recipients. Further regarding the amount of additional benefit of the input tax credit, it appeared that based on the aforesaid CENVAT/input tax credit

availability in the pre and post-GST periods and the details of the amount collected by the Respondent from the Applicant No. 1 and other home buyers during the period from 01.07.2017 to 31.10.2018, the amount of benefit of input tax credit that needed to be passed on by the Respondent to the recipients, came to **Rs. 1,42,369/-** which includes 12% GST on the base profiteered amount of Rs. 1,27,115/-. The home buyer/ unit-wise break-up of this amount was given as per **Annex-45** of the Report. This amount was inclusive of Rs. 21,113/- (including GST on the base profiteered amount of Rs. 18,851/-) which is the benefit of input tax credit required to be passed on to the Applicant No. 1, mentioned at serial no. 4 of Annex-45.

16. He also submitted that the above computation of profiteering was concerning 11 home buyers, whereas the Respondent had booked 20 units till 31.10.2018, out of which 9 customers who had booked the flats and also paid the booking amounts in the pre-GST period have not paid any consideration during the post-GST period 01.07.2017 to 31.10.2018 (period under investigation). Therefore, if the input tax credit in respect of these 9 units was considered to calculate profiteering in respect of 11 units where payments have been received after GST, the input tax credit as a percentage of turnover may be erroneous. Therefore, the benefit of the input tax credit in respect of these 9 units may be calculated when the consideration is received from such units by taking into account the proportionate input tax credit in respect of such units. He also observed that the said

services have been supplied by the Respondent in the State of Karnataka only.

17. He conclusively submitted that provision of Section 171 of the Central Goods and Services Tax Act, 2017 have been contravened by the Respondent, since the additional benefit of input tax credit @0.92% of the base price received by the Respondent during the period 01.07.2017 to 31.10.2018, has not been passed on by the Respondent to the Applicant No. 1 and other recipients. On this account, the Respondent has realized an additional amount to the tune of Rs. 21,113/- from the Applicant No. 1 which included both the profiteered amount @ 0.92% of the base price and GST on the said profiteered amount and an additional amount of Rs. 1,21,256/- which includes both the profiteered amount @0.92% of the base price and GST on the said profiteered amount, from 10 other recipients who were not Applicants in the present proceedings. As these recipients were identifiable as per the documents provided by the Respondent, therefore, this additional amount of Rs. 1,21,256/- was required to be returned to such eligible recipients. He also submitted that as the present investigation covered the period from 01.07.2017 to 31.10.2018, profiteering, if any, for the period post-October, 2018, has not been examined as the exact quantum of input tax credit that will be available to the Respondent in the future could not be determined at this stage, when the Respondent is continuing to avail input tax credit in respect to the present project.



18. The above Report was considered by the Authority in its meeting held on 15.10.2019 and it was decided to hear the Applicants and the Respondent on 06.11.2019. Notice dated 17.10.2019 was also issued to the Respondent to explain why the Report furnished by the DGAP should not be accepted and his liability for having violated the provisions of Section 171 of the CGST Act, 2017 should not be fixed. Further opportunities of hearings were given on 26.11.2019 and 10.12.2019 however, neither the Applicants nor the Respondent appeared in any of the hearings.

19. The Applicant No. 1 vide his submissions dated 06.11.2019 submitted that the Respondent had sent a cheque of Rs. 90,000/- to him claiming that the excess GST charged has been refunded and so that the Anti-profiteering case should not be proceeded, however, it was very less than the actual profiteering established against the builder. The Applicant No. 1 further submitted the Respondent had claimed that the project "Elegant Berkeley" was completed in December 2016 however, the GST has been charged from him even in the subsequent demands after December 2016. He also submitted that the Respondent's claim that he had not applied for completion certificate or occupancy certificate, as it was not mandatory for a small project was incorrect as per the building by-laws of BBMP Bangalore, OC and CC are mandatory for any residential complex with more than 5 units. Further, vide submissions dated 11.11.2019 Applicant No. 1 submitted that the Respondent has

increased the cost of the flat from Rs 99,00,000/- to Rs. 1,05,48,000/- after implementation of GST by charging an extra sum of Rs 3,78,000/- and also refused to provide the appropriate tax invoice for the same which may be due to tax avoidance. He further submitted that he could not attend the hearing and he agreed to the Report submitted by the DGAP.

20. The Respondent vide his submissions dated 05.11.2019 stated that he had refunded an amount of Rs. 90,000/- vide cheque no. 000824 dated 4.11.2019 to the Applicant No. 1 being the excess GST amount which was erroneously collected. He further submitted that as he had cleared/settled the excess GST amount the matter may be closed. He also submitted that he was aged about 67 years and due to old age problems he could not attend the hearing.

21. We have carefully considered the Report of the DGAP, submissions made by the Respondent, and based on the record it is revealed that the Respondent is executing project "Elegant Berkeley" situated at Hennur Village, Kasaba Hobli, BBMP Ward No. 30, Bangalore North. On examining the various submissions we find that the following issues need to be addressed:-

- a. Whether there was reduction in the rate of tax on the construction service provided by the Respondent w.e.f. 01.07.2017?

A handwritten signature in black ink, appearing to be 'AAB', is written over the end of the list item 'a'.

- b. Whether there was any net additional benefit of ITC which has accrued to the Respondent which was required to be passed on by him to his recipients?
- c. Whether there was any violation of the provisions of Section 171 of the CGST Act, 2017, by not passing on the above benefits by the Respondent?

22.A perusal of the Report dated 08.10.2019 furnished by the DGAP shows that after taking into account the benefit of credit available during the pre-GST period from April 2016 to June 2017 to the taxable turnover received during the above period the ratio of ITC to turnover has been computed by the DGAP as 0.49% of the turnover as per Table-B supra. Similarly, the above ratio has been calculated as 1.41% for the post-GST period from 01.07.2017 to 31.08.2018. Accordingly, the DGAP has claimed that the Respondent has benefited to the tune of 0.92% of the turnover which he is required to pass on to his buyers. The above ratios of ITC to turnover have been arrived at by the DGAP based on the information/documents supplied by the Respondent which has been duly verified by the DGAP and hence the above ratios can be relied on. The Respondent has not disputed the above ratios and had instead requested to close the matter as he has voluntarily refunded an amount of Rs. 90000/- to the Applicant No. 1 being the excess GST amount which was erroneously collected. However, the DGAP in his report dated 08.10.2019 has calculated the amount to be

refunded to the Applicant No.1 as Rs. 21,113/- as per Annexure-45 of the said report. The Respondent has not attended any of the three hearing opportunities afforded to him and hence we have no option except to conclude the hearing on basis of his sole submissions dated 05.11.2019.

23.Applicant No. 1 vide his submissions dated 06.11.2019 submitted that although he agreed to the DGAP the Report, he would like to point out that the Respondent has increased the cost of the flat from Rs 99,00,000/- to Rs. 1,05,48,000/- after implementation of GST by charging an extra sum of Rs 3,78,000/- and also refused to provide the appropriate tax invoice for the same which may be due to tax avoidance however, this issue is outside the preview of Anti-Profiteering provisions. He may approach the appropriate forum for redressal of the same.

24.Based on the above facts this Authority determines the profiteered amount as Rs. 1,42,369/- (inclusive of applicable GST @ 12%) for the 11 residential units for the period from 01.07.2017 to 31.08.2018 as per the details furnished by the DGAP vide Annexure-45 of his above Report. The above amount includes an amount to the tune of Rs. 21,113/- due to the Applicant No. 1 (inclusive of applicable GST) and an additional amount of Rs. 1,21,256/- (inclusive of applicable GST) to 10 other recipients who were not Applicants in the present proceedings as per the details furnished by the DGAP vide Annexure-45 of the above Report.




25. It is also established from the perusal of the above facts of the case that the provisions of Section 171 of the CGST Act, 2017 have been contravened by the Respondents as he has failed to pass on the benefit of additional ITC to his customers. Accordingly, he is directed to pass on an amount of Rs 21,113/- to the Applicant No. 1 and an amount of Rs. 1,21,256/- (Rs. 1,42,369 - Rs. 21,113/-) to the other flat buyers who are not Applicants in the present proceedings as per the details given by the DGAP in Annexure-45. The above amounts shall be paid within a period of 3 months from the date of issue of this Order to the Applicant No. 1 and the other eligible house buyers by the Respondent along with interest @ 18% from the date from which these amounts were realized by the Respondent from them, till they are paid as per the provisions of Rule 133 (3) (b) of the CGST Rules, 2017, failing which the above amounts shall be recovered by the concerned Commissioner CGST / SGST and paid to the eligible house buyers.

26. From the above discussions, it is clear that the Respondent has profiteered by an amount of Rs. 1,42,369/- during the period of investigation. Therefore, 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 commensurate with the benefit of ITC received by him as has been detailed above. The present investigation is only up to 31.08.2018 therefore, any additional benefit of ITC which shall accrue subsequently shall also be passed on to the buyers by the

Respondent. In case this additional benefit is not passed on to the Applicant No. 1 or other buyers they shall be at liberty to approach the State Screening Committee Karnataka for initiating fresh proceedings under Section 171 of the above Act against the Respondent. The concerned CGST or SGST Commissioner shall take necessary action to ensure that the benefit of additional ITC is passed on to the eligible house buyers in the future.

27. It is evident from the above that the Respondent has denied the benefit of ITC to the buyers of the flats being constructed by him in contravention of the provisions of Section 171 (1) of the CGST Act, 2017 and has thus profited as per the explanation attached to Section 171 of the above Act. Therefore, he is liable for imposition of penalty under Section 171 (3A) of the CGST Act, 2017. Therefore, a Show Cause Notice be issued to him directing him to explain why the penalty prescribed under the above sub-Section should not be imposed on him.

28. Further, the Authority as per Rule 136 of the CGST Rules 2017 directs the Commissioners of CGST/SGST Karnataka to monitor this order under the supervision of the DGAP by ensuring that the amount profited by the Respondent as ordered by the Authority is passed on to all the buyers as per Annexure-45 of the Report. A report in compliance of this order shall be submitted to this Authority by the concerned Commissioners within a period of 4 months from the date of receipt of this order.

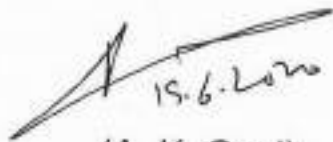


29.As per the provisions of Rule 133 (1) of the CGST Rules, 2017 this order was to be passed on or before 09.04.2020 as the investigation Report was received from the DGAP on 10.10.2019. However, due to the COVID-19 pandemic prevailing in the Country the order could not be passed on or before the above date. Hence, the same is being passed today in terms of the Notification No. 35/2020-Central Tax dated 03.04.2020 issued by the Government of India, Ministry of Finance, Department of Revenue, Central Board of Indirect Taxes & Customs under Section 168 A of the CGST Act, 2017.

30.A copy each of this order be supplied to the Applicants, the Respondent, Commissioners CGST /SGST as well as Director (Town & Country Planning) Bengaluru, Government of Karnataka for necessary action. File be consigned after completion.



Certified copy


15.6.2020

(A. K. Goel)
Secretary, NAA

o/c

Sd/-
(Dr. B. N. Sharma)
Chairman

Sd/-
(J. C. Chauhan)
Technical Member

Sd/-
(Amand Shah)
Technical Member

File No. 22011/NAA/91/Elc/2018 /3426-3431

Dated: ¹⁹~~22~~.06.2020

Copy To:-

1. M/s Elegant Properties, 02, Elegant Desire, First Floor, No. 1 Coles Road, Frazer Town, Bangalore -560045.
2. Shri Kamal Nayan Singhania, Flat No. B-503, Rajatha Greens, 5/1B, Nagawara Main Road, Bangalore-45.
3. 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.
4. Pr. Chief Commissioner, Central Tax, Bengaluru (Karnataka) Zone, 1, CK Jaffer Rd, Vasanth Nagar, Bengaluru, Karnataka -560001.
5. Commissioner, Commercial Taxes Department Office-1, Main Road, Gandhi Nagar, Bangalore -560009.
6. Guard filie


19.6.2020