

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

Case No.	39/2019
Date of Institution	08.04.2019
Date of Order	21.06.2019

In the matter of:

1. Sh. Peeyush Awasthi, Q. No. 268-4, H-type, Off Estate, Shahjahanpur, Uttar Pradesh-242001.
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

M/s Sun Infra Services Pvt. Ltd., City Park Colony, Lodhipur,
Shahjahanpur, Uttar Pradesh- 242001.

Respondent

Quorum:-

1. Sh. B. N. Sharma, Chairman
2. Sh. J. C. Chauhan, Technical Member
3. Ms. R. Bhagyadevi, Technical Member
4. Sh. Amand Shah, Technical Member

Present:-

1. None for the Applicant No. 1.
2. Ms. Gayatri, Deputy Commissioner and Sh. Rana Ashok Rajneesh, Assistant Commissioner for the Applicant No. 2.
3. Sh. Adeep Veer Jain, Counsel for the Respondent

ORDER

1. The present Report dated 29.10.2018, has been received from the Applicant No. 2 the Director General of Anti-Profiteering (DGAP) after detailed investigation under Rule 129 (6) of the Central Goods & Service Tax (CGST) Rules, 2017. The brief facts of the present case are that the Uttar Pradesh State Screening Committee on Anti-profiteering, vide the minutes of its meeting held on 26.03.2018 had forwarded an application dated 09.01.2018 filed by the Applicant No. 1 to the Standing Committee on Anti-profiteering under Rule 128 of the CGST Rules, 2017. The Applicant No. 1 had stated that the Respondent had resorted to profiteering in respect of supply of construction service related to purchase of Villa No. B-02 in the Respondent's project "City Park Township", Lodhipur, Shahjahanpur, Uttar Pradesh- 242001. The Applicant No. 1 had also alleged that the Respondent had increased the price of the Villa after implementation of the Goods & Service Tax (GST) w.e.f. 01.07.2017 and had not passed on the benefit of Input Tax Credit

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(ITC) by way of commensurate reduction in the price of the Villa purchased by him. He had also claimed that the Respondent had committed contravention of the provisions of Section 171 of the CGST Act, 2017 and hence appropriate action should be taken against him.

2. The Standing Committee on Anti-profiteering vide the minutes of its meeting held on 25.05.2018 had requested the DGAP to initiate investigation under Rule 129 (1) of the CGST Rules, 2017 and collect evidence necessary to determine whether the benefits of reduction in the rate of tax or ITC had been passed on by the Respondent to his recipients or not?
3. After examination of the application filed by the Applicant No. 1, the DGAP had found that the Applicant No. 1 had booked a Villa with the Respondent on 27.03.2017, i.e. before coming into force of the GST. He has also given the following schedule of demands raised by the Respondent on booking of the Villa by the above Applicant as per the Table-A below:-

Table-'A'

(Amounts in Rs.)

Particulars	BSP	Service Tax	GST	Total
Agreement Value (A)	51,00,000	1,91,250	-	52,91,250
Paid in Pre-GST era (B)	10,18,193	38,182	-	10,56,375
Balance to be paid Post GST (C)= (A)-(B)	40,81,807	1,53,068	-	42,34,875
Amount Demanded by the Respondent during 01.07.2017 to 30.09.2018 (D)	34,90,155	-	4,18,819	39,08,974
Amount to be demanded by the Respondent (E)	5,91,652	-	70,998	6,62,650
Total Amount demanded post GST (F)=(D)+(E)	40,81,807	-	4,89,817	45,71,624
Excess Demand by the Respondent (G)= (F)-(C)				3,36,749

4. The DGAP had also found that the Respondent had sought to increase the price to Rs. 57, 12,000/- (inclusive of GST @ 12% on the base price of Rs. 51,00,000/-) instead of the earlier

agreed price of Rs. 52,91,250/- (inclusive of Service Tax @ 3.75% on the base price of Rs. 51,00,000/-), without passing on the benefit of ITC.

5. The DGAP had issued Notice under Rule 129 of the CGST Rules, 2017 on 18.06.2018 to the Respondent asking him to file reply on the allegations levelled against him and also to explain whether he had committed violation of the provisions of Section 171 of the CGST Act, 2017 by not passing on the benefit of ITC to the Applicant No. 1 by way of commensurate reduction in the price of the Villa. The Respondent was also asked to suo moto determine the quantum of profiteering, if any, and reflect the same in his reply to the Notice. The Respondent was given opportunity by the DGAP to inspect the non-confidential evidence/information submitted by the Applicant No. 1 between 25.06.2018 and 27.06.2018 but the Respondent did not avail of the said opportunity. The Applicant No. 1 was also given an opportunity to inspect the non-confidential evidence/reply furnished by the Respondent between 15.10.2018 to 17.10.2018. However, he did not avail of the said opportunity and informed that he was unable to come and inspect the documents. The DGAP has also intimated that the present investigation has been carried out from 01.07.2017 to 30.06.2018.

6. The Respondent had submitted replies to the notice issued by the DGAP vide his letters dated 30.06.2018, 09.07.2018, 17.07.2018, 27.07.2018, 14.08.2018, 28.08.2018, 07.09.2018, 11.09.2018, 03.10.2018, 11.10.2018, 15.10.2018 and

26.10.2018 and stated that there were complexities in construction business and he was in the process of computing the benefit of additional ITC available to him after implementation of the GST and he had assured his customers that any benefit which would accrue to him post-GST, after completion of the project, shall be duly passed on at the time of giving possession, so that accurate benefit could be passed on to the customers.

7. The Respondent further stated that he was involved in a single project, viz., "City Park" which comprises of both Villas and Plots (Land), the details of which are given in the Table-'B' below:-

Table- 'B'

S.No.	Type	Total No. of Plots (Land)	Total Plot Area (SQ. MTR)	Total No. of Villas	Total Area of Villas(SQ. MTR)
1	A	79	13,199.32	4	668.32
2	B	78	10,874.40	24	3,320.38
3	C	105	10,691.11	49	5,004.35
Total		262	34,764.83	77	8,993.05

8. The Respondent has further submitted that the sale of plots (Land) was an exempt supply in terms of Para 5 of Schedule III of the CGST Act, 2017 on which GST was not leviable. The project constructed by the Respondent was not an affordable housing project and therefore, there was no fixed basic rate per sq. mt. and the sale price depended on many factors, such as, negotiation with the customers, market demand, stage of completion, location of project, Villa size and any new development during the project construction etc. The Respondent has further submitted that all the Villas of the project were not sold so far and there were uncertainties regarding the rate at which these would be sold in future. There might be Villas

which would not be sold before issuance of completion certificate and in terms of Para 5 of Schedule III of the CGST Act, 2017, such Villas would not attract GST. In such cases, he would be required to reverse proportionate ITC attributable to the Villas where the entire consideration was received after issuance of the completion certificate, in terms of Section 17 of the CGST Act, 2017 read with Rule 42 of the CGST Rules, 2017. Therefore, He has contended that the ITC which would be reversed would form part of the cost of construction of such Villas. The Respondent has requested that except the following data/information, all other details/information were to be treated as confidential, in terms of Rule 130 of the Central Goods and Services Tax Rules, 2017:

- i. Copy of tripartite agreement along with allotment letter.
- ii. Copy of applicant's statement of account and demand letters along with details of payment received from him.
- iii. Details of applicable tax rates, pre-GST & post-GST.
- iv. Documents submitted to RERA.
- v. Letter of withdrawal of the complaint by the applicant.

9. The DGAP has also intimated that the Applicant No. 1 had informed the Respondent, vide letter dated 30.06.2018 (addressed to DGAP), that the matter had been mutually discussed and he was left with no grievance against the Respondent with regard to GST demand. The above Applicant had further requested to treat the present complaint against the Respondent as withdrawn.

10. The DGAP has also informed that the Respondent had also submitted Copies of GSTR-1 returns for the period July, 2017 to June, 2018, Copies of GSTR-3B returns for the period July, 2017 to June, 2018, Copies of VAT & ST-3 returns for the period April, 2016 to June, 2017, Copies of all demand letters and tripartite agreement along with allotment letter issued to the applicant, Copy of statutory Audit Report for the FY 2016-17 including Director's Report, Copy of provisional Financial Statement for FY 2017-18, Tax rates - pre-GST and post-GST, Copy of Electronic Credit Ledger for the period 01.07.2017 to 30.06.2018, Copy of Electronic Cash Ledger for the period 01.07.2017 to 30.06.2018, CENVAT/Input Tax Credit register for the period April, 2016 to June, 2018, Project Report submitted to RERA and the list of home buyers in the project "City Park".

11. The DGAP vide his Report dated 29.10.2018 has further informed that the main issue for determination in the present case was whether there was reduction in the rate of tax or the benefit of ITC was available to the Respondent on the supply of construction service after implementation of the GST w.e.f. 01.07.2017 and if so, whether any benefit was required to be passed on to the recipients by him in terms of Section 171 of the CGST Act, 2017.

12. The DGAP has also stated that the Respondent, vide letter dated 09.07.2018, has submitted a copy of the agreement for the purchase of the Villa executed by the Applicant No. 1, measuring 137.10 square meters at the base price of Rs. 51,00,000/-,

copies of the demand letters and the payment schedule. The details of amounts and taxes paid by the Applicant No. 1 to the Respondent are furnished in Table-'C' below.

Table-'C'

(Amounts in Rs.)

S. No.	Payment Stages	Due Date	Base Price (%)	Base Price	Service Tax including SBC & KKC	GST	Total	Actual Payment Date	Actual Payment Amount
1	At the time of Booking	27.03.2017	20%	10,20,000	38,250	-	10,58,250	27.03.2017	50,000
2	At the time of Plinth Label	05.06.2017	20%	10,20,000	38,250	-	10,58,250	09.06.2017	10,06,375
3	Door Label	04.12.2017	10%	5,10,000		61,200	5,71,200	06.12.2017	12,72,860
4	Slab Label	26.03.2018	10%	5,10,000		61,200	5,71,200	26.03.2017	15,12,857
5	Completion of Civil Work	26.03.2018	10%	5,10,000		61,200	5,71,200		
6	Plaster	04.06.2018	10%	5,10,000		61,200	5,71,200	06.06.2018	11,23,257
7	Flooring	04.06.2018	10%	5,10,000	-	61,200	5,71,200		
8	Finishing	Not due till date of application	5%	2,55,000	-	30,600	2,85,600		
9	Possession		5%	2,55,000	-	30,600	2,85,600		
Total			100%	51,00,000	76,500	3,67,200	55,43,700		49,65,349

13. The DGAP has further submitted that the contention of the Respondent that the accurate quantum of ITC would be finally determined and the benefit passed on to the recipients at the time of giving possession of the Villas, might be correct but the profiteering, if any, had to be established within the prescribed time in terms of Rule 129(6) of the CGST Rules, 2017. Therefore, the input tax credit available to the Respondent and the taxable amount received by him from the Applicant No. 1 and the other recipients so far had to be taken into account for determining profiteering.

14. The Respondent has also submitted that the Applicant No. 1 had withdrawn his complaint and hence, investigation should be closed/dropped. Upon examining this submission carefully, the DGAP found that while the present proceedings must flow from an application but there was no statutory provision for its withdrawal. Also, in terms of Rule 129 of the CGST Rules, 2017, the DGAP was under statutory obligation to complete the investigation in case of receipt of any reference from the Standing Committee on Anti-profiteering. For these reasons, the subsequent withdrawal of an application was not a legally valid ground to discontinue the proceedings, the DGAP has claimed.

15. The Respondent had also contended that all the Villas of the project had not been sold and there were uncertainties regarding the sale of these units before receiving the completion certificate from the competent authority. In case completion certificate was received prior to entering into sale agreements and remaining payment of such unsold Villas, proportionate ITC would be required to be reversed in terms of Para 5 of Schedule III of the CGST Act, 2017 read with Section 17 of the said Act and Rule 42 of the CGST Rules, 2017. In this regard, He has noted that 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) read 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 read 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".

Therefore, the DGAP has submitted that these provisions make it clear that the ITC pertaining to Villas which were under construction but not sold, was provisional and the same might be required to be reversed by the Respondent in terms of Sections 17(2) & 17(3) of the Central Goods and Services Tax Act, 2017 which read as under:

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.*

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, ITC pertaining to unsold units was outside the scope of this investigation and the Respondent was required to recalibrate the selling price of such units to be sold to prospective buyers by

considering the net benefit of additional input tax credit available to them post-GST.

16. The DGAP has also found that prior to 01.07.2017, i.e., in the pre-GST era, the Respondent had availed CENVAT credit of Service Tax paid on input services but the CENVAT credit of Central Excise Duty paid on inputs and credit of VAT paid on purchase of inputs was not available. Post-GST, the Respondent had availed ITC of GST paid on inputs and input services including on the sub-contracts. The DGAP has claimed that from the data submitted by the Respondent which has been verified from the invoices pertaining to the pre-GST period (April, 2016 to June, 2017) and the post-GST period (July, 2017 to June, 2018), the details of the input tax credit availed by the Respondent and the Respondent's taxable turnover during the said periods were furnished in Table-D below.

Table-'D'

(Amounts in Rs.)

S. N o.	Particulars	April, 2016 to March, 2017	April, 2017 to June, 2017	Total (Pre-GST)	July, 2017 to March, 2018	April, 2018 to June, 2018	Total (Post-GST)
(1)	(2)	(3)	(4)	(5)=(3)+(4)	(6)	(7)	(8)=(6)+(7)
1	Total Service Tax Credit availed as per Returns (A)	2,91,284	-	2,91,284	-	-	-
2	Input Tax Credit of GST availed as per Returns (B)	-	-	-	1,50,37,397	18,65,260	1,69,02,657
3	Total Taxable Turnover as per Returns (C)	3,96,48,001	3,92,74,231	7,89,23,232	6,53,08,955	1,03,83,432	7,56,92,387
4	Total Saleable Area of Villas in the project (Square Mtr) (D)			8,993.05			8,993.05
5	Area Sold relevant to Taxable turnover as per returns (E)			3,521.06			3,956.78
6	Relevant CENVAT/Input Tax Credit (F) = [(A)*(E)/(D)] or [(B)*(E)/(D)]			1,14,047			74,36,865
7	Ratio of CENVAT/ Input Tax Credit to Taxable Turnover (G)=[(F)/(C)]			0.15%			9.83%

17. He has further claimed that from the Table-'D' above, it was clear that the ITC as a percentage of the total turnover that was available to the Respondent during the pre-GST period (April,

2016 to June, 2017) was 0.15% and during the post-GST period (July, 2017 to June, 2018), it was 9.83%, which clearly confirmed that post-GST, the Respondent had benefited from additional ITC to the tune of 9.68% (9.83%-0.15%) of the total turnover.

18. The DGAP has also claimed that issue of profiteering has been examined by comparing the applicable tax rate and ITC available in the pre-GST period (April, 2016 to June, 2017) when Service Tax and VAT were payable (total tax rate of 4.75%) with the post-GST period (July, 2017 to June, 2018) when the effective GST rate was 12% (GST @18% alongwith 1/3rd abatement on value) on construction service, vide Notification No.11/2017-Central Tax (Rate), dated 28.06.2017. On the basis of the figures contained in Table-'D' above, the comparative figures of input tax credit availed/available during the pre-GST and post-GST period had been tabulated in the Table-'E' below.

Table-'E'

(Amounts in Rs.)

S. No.	Particulars		Pre-GST	Post- GST
1	Period	A	April, 2016 to June, 2017	July, 2017 to June, 2018
2	Output tax rate (%)	B	4.75%	12.00%
3	Ratio of CENVAT/ Input Tax Credit to Taxable Turnover as per Table - 'D' above (%)	C	0.15%	9.83%
4	Increase in tax rate post-GST (%)	D= 12% less 4.75%	-	7.25%
5	Increase in input tax credit availed post-GST (%)	E= 9.83% less 0.15%	-	9.68%
<u>Analysis of increase in input tax credit:</u>				
6	Base Price collected during July, 2017 to June, 2018	F		7,56,92,387
7	Less: Units cancelled and amount refunded	G		3,57,143
8	Net Base Price collected during July, 2017 to June, 2018	H=F-G		7,53,35,244
9	GST Collected @ 12% over Base Price	I= H*12%		90,40,229
10	Total Demand collected	J=H+I		8,43,75,473
11	Recalibrated Base Price	K= H*(1-E) or 90.32% of H		6,80,42,792
12	GST @12%	L= K*12%		81,65,135
13	Commensurate demand price	M= K+L		7,62,07,927
14	Excess Collection of Demand or Profiteering Amount	N= J - M		81,67,546

19. The DGAP has further claimed that it was clear from Table- 'E' given above that the net additional input tax credit of 9.68% of the taxable turnover should have resulted in 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 the additional input tax credit that had accrued to the Respondent, was required to be passed on to the recipients. Whereas the Respondent had not contested that any such benefit would eventually be passed on to the recipients at the time of giving possession of the Villa, it was a fact that this had not been done so far. The payments received from the Applicant No. 1 and other recipients did not reflect the benefits available to the Respondent, which meant that the Respondent, had retained the benefits on account of GST. In other words, by not reducing the pre-GST base price by 9.68% on account of additional benefit of input tax credit and charging GST at the increased rate of 12% on the pre-GST base price, the Respondent had contravened the provisions of Section 171 of the Central Goods and Services Tax Act, 2017

20. The DGAP has also claimed that on the basis of the aforesaid CENVAT/ITC availability in the pre and post-GST period and on the basis of details of the amount collected by the Respondent from home buyers during the period 01.07.2017 to 30.06.2018, the amount of benefit of ITC that had not been passed on by the Respondent to the recipients or in other words, the profiteered amount came to Rs. 81,67,546/- which included 12% GST on the

base profiteered amount of Rs. 72,92,452/-. The home buyer and unit no. wise break-up of this amount was given in **Annex-21** to the DGAP's Report dated 29.10.2018. This amount is inclusive of Rs. 3,78,389/- (including 12% GST on the base amount of Rs. 3,37,847/-) which is the profiteered amount in respect of the above Applicant, mentioned at serial no. 16 of Annex-21. On the basis of the details of outward supplies of the construction service submitted by the Respondent, it was observed that the service was supplied in the State of Uttar Pradesh only.

21. The DGAP has also contended the benefit of additional input tax credit (9.68%) was more than the increase in rate of tax (7.25%) which meant that there was net benefit of input tax credit that accrued to the Respondent and the same was required to be passed on to the applicant and other recipients. Hence, the provision of Section 171 of the Central Goods and Service Tax Act, 2017 has been contravened by the Respondent in as much as the additional benefit of input tax credit @9.68% of the base price received by the Respondent during the period 01.07.2017 to 30.06.2018, has not been passed on to the applicant and other recipients. On this account, the Respondent have realized an additional amount to the tune of Rs. 3,78,389/- from the applicant which included both the profiteered amount @9.68% of the taxable amount (base price) and GST on the said profiteered amount @12%. Further, the investigation revealed that the Respondent had also realized an additional amount of Rs. 77,89,157/- which included both the profiteered amount @9.68%

of the taxable amount (base price) and GST on the said profiteered amount @12% from the other recipients who were not applicants in the present proceedings. These recipients were identifiable as per the documents on record as the Respondent has provided their names and addresses along with unit nos. allotted to them. Therefore, this additional amount of Rs. 77,89,157/- is required to be returned to such eligible recipients. As observed earlier, the Respondent has supplied construction services in the State of Uttar Pradesh only.

22. The above Report was considered by the Authority in its sitting held on 13.11.2018 and it was decided to hear the Applicants and the Respondent on 28.11.2018.

23. The first hearing was held on 28.11.2018 wherein the Applicant No. 1 was not present; Applicant No. 2 was represented by Ms. Gaytri, Deputy Commissioner and the Respondent was represented by Sh. Adeep Veer Jain, Counsel. The Second hearing was held on 26.12.2018 wherein the Applicant No. 1 was not present; Applicant No. 2 was represented by Sh. Rana Ashok Rajneesh, Assistant Commissioner and the Respondent was represented by Shri Adeep Veer Jain, Counsel.

24. The Respondent has filed written submissions on 28.11.2018 & 26.12.2018 through which he has mentioned the fact that he was involved in a single project viz. "City Park" which was yet to be completed and that there were complexities in the construction business and he was in the process of computing the benefit of additional ITC available after implementation of the GST and he

had also assured his customers that any benefit which would accrue post-GST to him over the period of the project shall be duly passed on at the time of giving possession so that accurate benefits could be passed on to the customers. He has also stated that he was also committed to refund the due benefit of ITC post GST to all his customers from whom full & final payment had been received. He has further stated that after receiving the DGAP's Report, he had immediately issued cheques of Refund as well as Credit Notes on 20/11/2018 and onwards to all the beneficiary home buyers on account of ITC benefit as per the calculation mentioned in the DGAP's Report.

25. He has also submitted that he had issued cheques amounting to Rs. 26,08,535/- to all the 17 home buyers from whom he had received full & final payment and credit notes of Rs. 55,59,010/- to rest of the 19 home buyer from whom partial payment was received in the post GST period between 01/07/2017 to 30/06/2018 aggregating to total benefit of Rs. 81,67,545/- as per the DGAP's Report. He has also submitted 36 (Thirty Six) copies of the cheques/credit notes along with the receipts of the home buyers on covering letters to whom these cheques/credit notes were issued. He has said that the reason of delay was only due to complex calculation which he was unable to do.

26. The Respondent has undertaken to pass on the additional benefits arising to him on account of increase in ITC in the next instalment to be collected from the existing homebuyers and for unsold Villas, he would incorporate the benefit in the selling price

or he would reverse the proportionate ITC in terms of Section 17 of the CGST Act, 2017 read with Rule 42 of the CGST Rules, 2017. He has also filed an Undertaking in this regard.

27. The Respondent was directed to submit the status of refund of Interest @18% p.a. to all beneficiaries. In this regard he has contended that only those home buyers who had paid the agreement value in full were eligible for interest on refund of GST benefit and rest of the home buyers had running accounts with him and they were not making full payment as per the demand notice but making the payment as per their convenience resulting in short payment as against the demand notice. Hence, they were not entitled to the interest. The Respondent also submitted that out of the 36 home buyers from whom the Respondent had received payment in the post GST period till 30.06.2018, only 17 home buyers had made the full & final payment against their Agreement Value and rest of the 19 home buyers had not paid their dues in full as per the demand notice/agreement till 30.06.2018. The Respondent added that since these 19 home buyers had not paid the full amounts due from them, they were only eligible to get the commensurate benefit of the ITC but were not eligible for the interest on the same. The Respondent also claimed that Applicant No. 1 had short paid Rs. 6,62,650 (including GST@12% Rs. 78,918/- on basic value of Rs. 5,91,652/-) till 20.11.2018 and hence, as per the calculation of GST benefit he was eligible for GST refund of Rs. 3,78,389/- which he had been credited in his running account but since his



dues as on 20.11.2018 were more than the eligible GST benefit he was not eligible for interest on his payment. The Respondent has further submitted a detail of the calculation of Interest due to each eligible Home Buyer @18% p.a. on GST benefit refund.

28. Supplementary Report was sought from the DGAP on the issues raised by the Respondent through his submissions dated 28.11.2018 and 26.12.2018. The DGAP vide his Report dated 17.12.2018 and 07.01.2019 has intimated that the cheques & credit notes issued by the Respondent to the home buyers have been duly reconciled with Annexures-21 to the DGAP's Report and the other issues raised by the Respondent had already been covered in the Investigation Report itself.

29. The Authority in its sitting held on 15.01.2019 had decided to hear the Applicants and the Respondent on 30.01.2019.

30. The final hearing was held on 30.01.2019 wherein the Applicant No. 1 was not present; Applicant No. 2 was represented by Sh. Rana Ashok Rajneesh, Assistant Commissioner and the Respondent was represented by Shri Adeep Veer Jain, Counsel.

31. The Respondent has filed written submissions on 30.01.2019 through which the Respondent has additionally submitted that he was involved in a single project viz. "City Park" which comprised both Villas and Plots (Land). There were three categories/types in the project viz. "A", "B" & "C", Type "A" had 114 residential plots, Type "B" had 103 residential plots & Type "C" had 154 residential plots. Out of the Layout Plan approved by UP RERA, the Respondent only owned & dealt in 339 residential plots (after



resizing of 6 plots). In Type "A", the Respondent was constructing Villas on only 4 plots and rest of the plots were either sold as such without any development or were available for sale. In Type "B", he was constructing Villas on only 24 plots and rest of the plots were either sold as such without any development or were available for sale. In Type "C", the Respondent was constructing Villas on only 49 plots and rest of the plots were either sold as such without any development or were available for sale. He has also added that he was ordered to disburse the due interest to the eligible home buyers on refund of GST benefits. He has disbursed interest @18% p.a. to all his 17 eligible home buyers on GST benefit refunded to them. He has also submitted the copies of 17 cheques of Interest distributed to his eligible home buyers alongwith their receipts & their ledgers.

32. Supplementary Report was sought from the DGAP for verification of payments alongwith interest @18% made to 17 home buyers. On the issues raised by the Respondent through his submissions dated 30.01.2019, the DGAP vide his Report dated 05.04.2019 has intimated that the issues raised by the Respondent had already been covered in the Investigation Report itself.

33. We have carefully perused the DGAP's Report, the written submissions of the Respondent and all the other material placed on record. The issues to be decided by this Authority in this case are as under:-

1) Whether there was any violation of the provisions of Section 171 (1) of the CGST Act, 2017 in this case?

2) If yes then what was the quantum of profiteering?

34. Perusal of Section 171 of the CGST Act shows that it provides as under:-

(1). "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."

35. It is clear from the plain reading of Section 171 (1) mentioned above 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 hence; this issue is not relevant in this case. On the issue of passing on the benefit of ITC in the post-GST era, it has been revealed by the DGAP's Report that the benefit of additional ITC of 9.68% of the taxable turnover during the period w.e.f. 01.07.2017 to 30.06.2018 the amount of ITC as on 30.06.2018, has accrued to the Respondent and the same was required to be passed on to the above Applicant and the other flat buyers. The DGAP has calculated the amount of ITC as Rs. 74,36,865/- which was availed by the Respondent vide Table-D supra on the basis of the information supplied by the Respondent and hence the

calculation done by him can be relied upon. He has also computed the ratio of ITC to the taxable turnover which was available to the Respondent before coming in to force of the GST w.e.f. 01.07.2017 as 0.15% and after 01.07.2017 as 9.83% as per Table-E which proves that the Respondent had availed additional ITC of 9.68% (9.83%-0.15%) post implementation of GST. The DGAP has also computed the amount of profiteering as Rs. 81,67,546/- vide Table-E on the basis of the details supplied by the Respondent himself which he has not challenged and hence the amount of profiteering assessed by the DGAP can be deemed to be correct. The DGAP has also computed the details of the benefit of ITC which is required to be passed on by the Respondent to each flat buyer as per Annexure-21 which has been accepted by the Respondent. The Respondent at no stage has objected to the calculation of the additional ITC availed by him or the profited amount made by the DGAP and has rather admitted the computation of both as correct and agreed to pay the above benefit as per the details prepared by the DGAP vide Annexure-21.

36. Based on the above facts the amount of profiteering in terms of Rule 133 (1) of the CGST Rules, 2017 is determined as Rs. 81,67,546/- including the GST @12% on the base profited amount of Rs. 72,92,452/- as per the details furnished by the DGAP. Accordingly, under Rule 133 (3) (a) of the CGST Rules,

2017 it is ordered that the Respondent shall reduce the price to be realized from the buyers of the flats commensurate with the benefit of ITC availed by him as has been detailed above. The above amount of profiteering includes an amount of Rs. 3,78,389/- including GST @12% on the base amount of Rs. 3,37,847/- which has been profited by the Respondent from the Applicant No. 1. The Respondent has already refunded Rs. 3,78,389/- to the Applicant No. 1 through credit note. The Respondent has also refunded Rs. 81,67,546/- to 36 Homebuyers through credit notes and cheques. He has also paid an amount of Rs. 3,00,126/- as interest @18% to only 17 home buyers who have made the full & final payment against their Agreement Value and rest of the 19 home buyers have not been paid as interest. However, he has not paid interest @18% to the Applicant No. 1 from the date from which the above amount was profited by him. Therefore, the Respondent is directed to pay interest to the Applicant No. 1 @18% from the above date. He is also directed to refund interest @18% of part payment made by the homebuyers from the date when the above amount was profited by him till the date of payment as per the provisions of Rule 133 (3) (b) of the above Rules. The interest shall be paid



by the Respondent within a period of 3 months from the date of this order failing which the same shall be recovered by the concerned Commissioner CGST/SGST as per the provisions of the CGST/SGST Act, 2017, under the supervision of the DGAP. A detailed Report confirming the action taken on the directions passed vide this order and the implementation of this order shall be submitted by the concerned Commissioner CGST/SGST through the DGAP within a period of 3 months from the date of this order.

37. It is evident from the above that the Respondent has denied benefit of ITC to the Applicants as well as the rest 36 purchasers of flats in contravention of the provisions of Section 171 (1) of the CGST Act, 2017 and has thus realized more price from them than what he was entitled to charge and has also compelled them to pay more GST than what they were required to pay by issuing incorrect tax invoices and hence he has committed offence under section 122 (1) (i) of the CGST Act, 2017 and therefore, he is liable for imposition of penalty under the above Section read with Rule 133 (3) (d) of the CGST Rules, 2017. Although notice for imposition of penalty has already been issued to the Respondent on 16.11.2018 however, no formal oral or

written submissions have been filed by the Respondent on the quantum of penalty. Therefore, keeping in view the principles of natural justice it would be appropriate to issue fresh notice asking him to explain why penalty should not be imposed on him for the above offence.

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



Certified copy

(Dev Kumar Rajwani)
Assistant Commissioner, NAA

Sd/-
(B. N. Sharma)
Chairman

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

Sd/-
(R. Bhagyadevi)
Technical Member

Sd/-
(Amand Shah)
Technical Member

File No. 22011/NAA/101/SunInfra/2018/3134-3137 Dated: 21.06.2019

Copy to:-

1. M/s Sun Infra Service Pvt. Ltd., 02, City Park Colony, Lodhipur, Shahjahanpur, Uttar Pradesh-242001.
2. Sh. Peeyush Awasthi, Q.No. 268-4, H-type, Off Estate, Shahjahanpur, Uttar Pradesh -242001, email-pawasthiocf@gmail.com, to attend the hearing on the stipulated date.
3. Director General Anti-Profiteering, Indirect Taxes & Customs, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.
4. NAA Website/Guard File.