

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

Case No. 55/2019
Date of Institution 21.02.2019
Date of Order 05.11.2019

In the matter of:

1. Shri Hardev Singh, 233-234, Ground Floor, Pocket 18, Sector 24, Rohini, Delhi- 110085.
2. Shri Vaneet Malhotra, WZ-195 F/4, Upper Second Floor, Street no. 4, Virender Nagar, Janakpuri, New Delhi- 110058
3. Smt. Martha Paohaonamai, A-171, Sec-15, Noida, Gautam Budh Nagar, Uttar Pradesh, Noida- 201301.
4. Ms. Megha Mehra, A-401, Sector-19, Noida.
5. Sh. Rahul Chaudhary, rahulch_4454@yahoo.com.
6. Sh. Ashok Singhal, ashoksingal0202@gmail.com.
7. Sh. Rameshwer Singh, rameshwarurp@gmail.com.
8. Sh. Ishu Khurana, ishukhurana@live.com.
9. 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 Ocean Seven Buildtech Pvt. Ltd., B4-505,506, Spaze I
Tech Park, Sohna Road, Sec-49, Gurugram, Haryana-
122018.

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. Applicant No. 1 Sh. Hardev Singh, Applicant No. 2 Sh. Vaneet Malhotra, Applicant No. 3 Ms. Martha Paohaonamai, Applicant No. 4 Ms. Megha in person alongwith their Authorised Representative Sh. R. K. Jain and Sh. Rameshwar Singh, Sh. Rahul Chawdhary, Sh. Ishu Khurana, Sh. Sonu Verma and Sh. Ashok Singhal, buyers, also in person.
2. Sh. R.A. Rajneesh, Assistant Commissioner and Sh. Manoranjan Singh, Assistant Commissioner for the Applicant No. 5.
3. Sh. Sanjay Yadav and S. Ghosh Roy, C.A. Authorised Representatives for the Respondent.



ORDER

1. This Report dated 21.02.2019, has been received from the Applicant No. 5 i.e. the Director General of Anti-Profiteering (DGAP), under Rule 129 (6) of the Central Goods & Services Tax (CGST) Rules, 2017. The brief facts of the present case are that the Haryana State Screening Committee on Anti-profiteering, vide the minutes of its meeting held on 20.06.2018 had referred 03 applications filed by the Applicant No. 1, 2 & 3, to the Standing Committee on Anti-profiteering, under Rule 128 of the CGST Rules, 2017, alleging profiteering by the Respondent in respect of supply of flats in the "Expressway Towers" project of the Respondent in Gurugram, under the Affordable Housing Policy, 2013, (AHP), issued by the Government of Haryana on 19.08.2013.
2. Another application was filed by the Applicant No. 4 before the Standing Committee on Anti-profiteering, alleging profiteering by the Respondent in respect of supply of the flat in the project mentioned above. All the Applicants had alleged that the Respondent had not passed on the benefit of Input Tax Credit (ITC) to them by way of commensurate reduction in the prices post implementation of GST w.e.f. 01.07.2017 and had charged GST on the full amount of instalments. To establish their allegation, all the four Applicants had also submitted copies of the demand letters issued to them by the Respondent in the context of supply of flats during the pre-GST and post-GST periods, and also a copy of the AHP and the Office Order-cum-Public Notice dated 17.07.2014 of the Government of Haryana on the matter.

3. The applications filed by the Applicant No. 1, 2 & 3 were examined by the Standing Committee on Anti-profiteering, in its meetings held on 07.08.2018 & 08.08.2018 whereby it was decided to forward the same to the DGAP to conduct a detailed investigation in the matter. The minutes of the above meetings of the Standing Committee were received by the DGAP on 30.08.2018.
4. Further, the application of Applicant No. 4, which had been received later, was also examined by the Standing Committee on Anti-profiteering, in its meeting held on 13.12.2018 whereby it was decided to forward the same for detailed investigation to the DGAP with the request to club the fourth application with the previous three applications. Minutes of this meeting of the Standing Committee on Anti-Profiteering were received by the DGAP on 07.01.2019.
5. The DGAP, on receipt of the first of the above four references from the Standing Committee on Anti-profiteering, issued a notice to the Respondent under Rule 129 of the CGST Rules, 2017 on 10.09.2018 (Annexure-4), calling upon the Respondent to reply as to whether he admitted that the benefit of ITC had not been passed on by him to the above Applicants by way of commensurate reduction in prices and if not passed on, to suo moto determine the quantum thereof and pass on the benefit and indicate the same in his reply to the notice as well as to furnish all supporting documents in the case. The Respondent was given an opportunity to inspect the non-confidential evidence/information furnished by the Applicants during the period 17.09.2018 to 19.09.2018. However,

the Respondent did not avail of the said opportunity. As regards the application received vide the second of the two references of the Standing Committee on Anti-Profiteering by the DGAP, the proceedings emanating out of both the references were clubbed by the DGAP. The Applicant No. 4 was made a co-applicant by the DGAP in the present proceedings vide his letter dated 22.01.2019 as the investigation in the matter was already underway.

6. The period covered by the DGAP under the current investigation is from 01.07.2017 to 31.08.2018. The time limit to complete the investigation was extended by this Authority upto 29.01.2019 vide its order dated 30.11.2018, in terms of Rule 129 (6) of the CGST Rules, 2017 for a period of two months. Further extension of time of 1 month upto 28.02.2019 was allowed to the DGAP to complete the investigation vide order dated 29.01.2019. The Investigation Report of the DGAP was received on 21.02.2019.

7. Vide his Report the DGAP has stated that in response to his notice dated 10.09.2018 and subsequent reminder dated 27.09.2018, the Respondent had submitted his responses vide letters dated 19.09.2018, 24.09.2018, 04.10.2018, 12.10.2018, 29.10.2018, 01.11.2018, 02.11.2018, 17.11.2018, 27.11.2018, 06.12.2018, 20.12.2018, 28.12.2018, 10.01.2019 and 21.01.2019. The averments made by the Respondent, vide his above letters, were summed up by the DGAP as below:-

(a) That "Expressway Towers", Sector-109 was his first construction project which was under the AHP, for which he

had received environmental clearance on 30.11.2017 and permission to start construction activity was given on 05.02.2018. Earlier, he was involved in land development projects only. Due to this fact, there had been no requirement of VAT and Service Tax registration in this case, as he was not within the ambit of these tax regimes.

- (b) That since no VAT or Service Tax was applicable to AHP, he had not charged the same from his clients and he had got registered under GST in August, 2017.
- (c) That the Applicant No. 1 had paid only application money (5% of the cost) and the subsequent instalment (20% of the cost) before GST and that the Applicant No. 1 had not paid the instalments demanded by the Respondent in November, 2017 and May, 2018. Since he had not paid any instalment post-GST, no GST was paid by him. The Applicant No. 2 & 3 had paid instalments post-GST with GST @12%, as per Government of India Notification, which was later reduced to 8%, w.e.f. 25.01.2018. The same had been adjusted in the demand letters issued in May, 2018.
- (d) That the Respondent had submitted that due to non-availability of permission to start construction activity prior to 05.02.2018, he had not raised demands on all the home buyers, but the same were issued to only those home buyers who had asked for the demand letters.



- (e) That the Respondent had assured that he would definitely pass on ITC benefit to all his customers when the last demand would be raised. By then, he would be aware of the details of the benefit of ITC to be passed on to his clients as his project would be close to completion/ possession.

8. In his Report, the DGAP has further stated that vide his aforementioned letters, the Respondent had submitted the following documents/information:

- (a) Copies of GSTR-1 returns for the period August, 2017 to August, 2018.
- (b) Copies of GSTR-3B returns for the period August, 2017 to August, 2018.
- (c) Copies of all demand letters issued in the name of the above Applicants.
- (d) Tax rates- pre-GST and post-GST.
- (e) Copy of Balance Sheet for FY 2016-17& FY 2017-18.
- (f) Copy of Electronic Credit Ledger for the period 01.08.2017 to 31.08.2018.
- (g) ITC register for the period September, 2017 to August, 2018.
- (h) Details of turnover and ITC for the project "Expressway Towers".
- (i) List of home buyers in the project "Expressway Towers".
- (j) Copy of Project Report of RERA.
- (k) Reconciliation of turnover reported in GSTR-3B with the list of home buyers.


6-11

(l) Details of unsold flats.

9. The DGAP has also stated in the Report that the Respondent had submitted that the financial data/information supplied by him was to be treated as confidential, in terms of Rule 130 of the CGST Rules, 2017. The above Applicants were given an opportunity to inspect the non-confidential documents submitted by the Respondent on 07.02.2019 or 08.02.2019, vide email dated 31.01.2019 by the DGAP. The Applicant No. 2 availed of the said opportunity and inspected the documents on 07.02.2019.
10. The DGAP has further stated that the above applications, the various replies of the Respondent and the documents/evidence on record were carefully examined by him and he had found that the main issue that needed to be examined was whether the Respondent had got any benefit of reduction in the rate of tax or on account of ITC in the course of supply of construction service by him after implementation of GST w.e.f. 01.07.2017 and if so, whether the Respondent had passed on such benefit to the recipients in terms of Section 171 of the CGST Act, 2017. The Respondent, vide letter dated 04.10.2018, had submitted the project report of the project "Expressway Towers" wherein payment schedule for the purchase of flats at the basic sale price of ₹ 4,000/- per sq. ft. for carpet area and ₹ 500 per sq. ft. for balcony area, was enclosed. The details of payment schedule have been furnished in Table-'A' below:



b-11

Table- A

Time of Payment	% of the total price payable
At the time of submission of the Application for allotment	5% of the total price
Within 15 days of the date of issuance of offer of Allotment letter	20% of the total price
Within 06 months of the date of issuance of offer of Allotment letter	12.5% of the total price
Within 12 months of the date of issuance of offer of Allotment letter	12.5% of the total price
Within 18 months of the date of issuance of offer of Allotment letter	12.5% of the total price
Within 24 months of the date of issuance of offer of Allotment letter	12.5% of the total price
Within 30 months of the date of issuance of offer of Allotment letter	12.5% of the total price
Within 36 months of the date of issuance of offer of Allotment letter	12.5% of the total price

11. The DGAP has also submitted that the Respondent, vide letter dated 19.09.2018, had submitted copies of the payment schedule and the demand letters issued to the Applicants No. 1, 2 & 3. The details of amounts and taxes paid by the said four Applicants to the Respondent were furnished by the DGAP as are given in Table-'B' below.

Table- B

Applicant No. 1

(Amount in ₹.)

S. No.	Payment Stage	Due Date	Basic %	BSP	Service Tax	GST	Total Amount payable	Amount paid
1	At the time of booking	11.09.2018	5.00%	1,31,475	-	-	1,31,475	1,31,475

2	Within 15 days of the date of issuance of offer of Allotment letter	20.05.2017	20.00%	5,25,900	-	-	5,25,900	5,25,900
3	Within 06 months of the date of issuance of offer of Allotment letter	19.11.2017	12.50%	3,28,688	-	26,295	3,54,983	0
4	Within 12 months of the date of issuance of offer of Allotment letter	19.05.2018	12.50%	3,28,688	-	26,295	3,54,983	0
Total			50.00%	13,14,751	-	52,590	13,67,341	6,57,375

Applicant No. 2 & 3

(Amount in ₹.)

S. No.	Payment Stage	Due Date	Basic %	BSP	Service Tax	GST	Total Amount payable	Amount paid
1	At the time of booking	30.12.2016	5.00%	1,31,300	-	-	1,31,300	1,31,300
2	Within 15 days of the date of issuance of offer of Allotment letter	20.05.2017	20.00%	5,25,200	-	-	5,25,200	5,25,200
3	Within 06 months of the date of issuance of offer of Allotment letter	19.11.2017	12.50%	3,28,250	-	26,260	3,54,510	3,54,510
4	Within 12 months of the date of issuance of offer of Allotment letter	19.05.2018	12.50%	3,28,250	-	26,260	3,54,510	13,130
Total			50.00%	13,13,000	-	52,520	13,65,520	10,24,140

Applicant No. 4

(Amount in ₹.)

S. No.	Payment Stage	Due Date	Basic %	BSP	Service Tax	GST	Total Amount payable	Amount paid
1	At the time of booking	12.12.2016	5.00%	63,125	-	-	63,125	63,125
2	Within 15 days of the date of issuance of offer of Allotment letter	01.04.2017	20.00%	2,52,500	-	-	2,52,500	2,52,500
3	Within 06 months of the date of issuance of offer of Allotment letter	30.09.2017	12.50%	1,57,813	-	12,625	1,70,438	0
4	Within 12 months of the date of issuance of offer of Allotment letter	19.05.2018	12.50%	1,57,813	-	12,625	1,70,438	0
Total			50.00%	13,13,000	-	52,520	13,65,520	3,15,625

12. In his Report, the DGAP has further submitted that the contention of the Respondent that he would pass on the benefit of ITC to the flat buyers when the last instalment would be demanded post completion of construction and final calculation of the cost of the project, might be correct but profiteering, if any, had to be determined at a given point of time, in terms of Rule 129 (6) of the CGST Rules, 2017. Therefore, the ITC available to the Respondent

and the amount received by him from the above Applicants and other recipients post implementation of GST, had to be taken into account for determining the benefit of ITC that was required to be passed on to the recipients.

13. The DGAP has also reported that the another aspect taken into consideration for ascertaining the profiteering was 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 CGST 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". Keeping the above in view, the DGAP has further reported that the ITC pertaining to the residential units, which were under construction but had not been sold was provisional ITC, which was liable to be reversed by the Respondent, if the residential units remained unsold at the time of issue of 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”.

In view of the above, the DGAP has claimed that the ITC pertaining to the 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 the prospective buyers by considering the net benefit of additional ITC available to him post-GST.

14. The DGAP has further claimed from the GST returns and other information submitted by the Respondent, it was found that the Respondent’s turnover was Rs. 16,90,20,522/- and he had availed ITC to the tune of Rs. 1,43,27,507 during the post-GST period (July, 2017 to August, 2018).

15. It was also reported by the DGAP that the Respondent had got permission to start construction for the project “Expressway Towers” on 05.02.2018, i.e., post implementation of GST w.e.f. 01.07.2017 and hence, no ITC was available to the Respondent in the pre-GST era. Further, as the service of construction of affordable housing, provided by the Respondent, was exempt from the Service Tax, vide Notification No. 25/2012-ST dated

20.06.2012, as amended by Notification No. 9/2016-ST dated 01.03.2016 issued by the Central Board of Excise and Customs (CBEC), the Respondent was exempt from any Service Tax liability on the receipts in the pre-GST era and was thus also not eligible to avail any CENVAT credit thereon. The Respondent was however eligible to avail ITC of GST paid on capital goods, inputs and input services post implementation of GST w.e.f. 01.07.2017. The DGAP has furnished the data submitted by the Respondent, duly verified from his returns filed during the post-GST period (July, 2017 to August, 2018), the details of the ITC availed by the Respondent, the Respondent's turnover during the said period and the ratio of ITC to the turnover, as is given in Table-C below:-

Table-'C'

(Amount in ₹.)

S. No.	Particulars	April, 2016 to March, 2017	April, 2017 to June, 2017	Total (Pre-GST)	01.07.2017 to 24.01.2018	25.01.2018 to 31.08.2018	Total (Post-GST)
1	CENVAT credit of Service Tax Paid on Input Services (A)	0	0	0			
2	ITC of VAT paid on Inputs (B)	-	-	-			
3	ITC of GST Availed (C)	-	-	-	23,46,360	1,19,81,147	1,43,27,507
4	Total CENVAT/ITC Available (D)=(A)+(B) or (C)	-	-	-	23,46,360	1,19,81,147	1,43,27,507
5	Total Turnover (E)= (C)+(D)	-	-	-	19,465,786	149,554,736	169,020,522
6	Total Saleable Carpet Area (in SqFt) (F)	-	-	-	5,58,047		5,58,047
7	Saleable Area relevant to turnover (in SqFt)(G)	-	-	-	2,45,616		2,45,616
8	Relevant ITC [(H)= (A)*(G)/(F)] or [(H)= (B)*(G)/(F)]	0	0	0	6,306,037		6,306,037
9	Ratio of ITC to Turnover Pre-GST and Post-GST [(J)=(I)/(F)]			0	3.73%		3.73%

16. The DGAP has further reported from the above Table-'C', 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% and during the post-GST period (July, 2017 to August, 2018), it was 3.73%. This clearly confirmed that post-GST, the

Respondent had benefited from additional ITC to the tune of 3.73% [3.73% (-) 0%] of the turnover. It was stated by him that the Central Government, on the recommendation of the GST Council, had levied 18% GST (effective rate was 12% in view of 1/3rd abatement for land value included in the service) on construction service, vide Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 (Annex-23). The effective GST rate on construction service in respect of affordable and low-cost housing was further reduced from 12% to 8%, vide Notification No. 1/2018-Central Tax (Rate) dated 25.01.2018. He has further stated that in view of the change in the GST rate after 01.07.2017, the issue of profiteering had been examined in two parts, i.e., (1) the post-GST period from July, 2017 to 24.01.2018, when the effective GST rate was 12% and (2) the GST period from 25.01.2018 to 31.08.2018, when the effective GST rate was 8%. Accordingly, on the basis of Table-C above, the increase in the availability of ITC, the Respondent's turnover, the recalibrated basic price and the excess collection by the Respondent during the post-GST period, the DGAP has furnished the following details:-

Table-'D'

(Amount in ₹)

S. No.	Particulars		Pre-GST	Post- GST		
				April,2016 to June,2017	July,2017 to January 24 th , 2018	January 25 th , 2018 to August, 2018
1	Period	A				
2	Output tax rate (%)	B	0	12	8	
3	Ratio of CENVAT/ ITC to Turnover as per Table-D above (%)	C	0	3.73%	3.73%	3.73%
4	Increase in ITC availed post-GST (%)	D	-	3.73%	3.73%	3.73%
5	Analysis of Increase in ITC:					
6	Base Price collected during July, 2017 to August, 2018 (Gross Turnover)	E		1,94,65,786	14,95,54,738	16,90,20,522

7	GST Collected over Basic Price	$F = E \times 12\% \text{ or } 8\%$		23,35,894	1,19,64,379	1,43,00,273
8	Total Demand collected	$G = E + F$		2,18,01,680	16,15,19,115	18,33,20,795
9	Recalibrated Basic Price	$H = E \times (1 - D) \text{ or } 96.27\% \text{ of } E$		1,87,39,531	14,39,74,954	16,27,14,485
10	GST @12/8%	$I = H \times 12/8\%$		22,48,743	1,15,17,996	1,37,66,740
11	Commensurate demand price	$J = H + I$		2,09,88,275	15,54,92,950	17,64,81,225
12	Excess Collection of Demand or Profiteering Amount	$K = G - J$		8,13,405	60,26,165	68,39,570

17. The DGAP has contended from the Table- 'D' above that the benefit of ITC of 3.73% of the 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 CGST Act, 2017, the benefit of the additional ITC that had accrued to the Respondent, was required to be passed on by him to his recipients.
18. The DGAP has, on the basis of the aforesaid CENVAT/ITC availability during the pre and the post-GST periods and the details of the amount collected by the Respondent from the above Applicants and other home buyers has quantified the amount of benefit of ITC that needed to be passed on by the Respondent to the recipients or in other words, the profiteered amount, as ₹ 8,13,405/-, including 12% GST on the base profiteered amount of ₹ 7,26,255/-, for the period from 01.07.2017 to 24.01.2018 and the profiteered amount as ₹ 60,26,165/- including 8% GST on the base profiteered amount of ₹ 55,79,782/- for the period from 25.01.2018 to 31.08.2018. Therefore, the total profiteered amount during the period from 01.07.2017 to 31.08.2018 has been calculated by the DGAP as ₹ 68,39,570/- which included GST (@ 12% or 8%) on the base profiteered amount of ₹ 63,06,036/-. The home buyer and unit no. wise break-up of this amount has been annexed by the DGAP

with his Report as Annex-25. The DGAP has also reported that as per Annexure-25, the Applicant No. 1 and 4 had not paid any amount in the post GST period and hence, they were not entitled for any benefit of increased ITC availability. However, in the case of Applicant No. 2 & 3, mentioned at serial no.187 and 484 of Annexure-25, the amount profiteered was Rs. 25,394/- (including GST).

19. On the basis of the details of the outward supplies of the construction service submitted by the Respondent, the DGAP has further reported that the said construction service had been supplied by the Respondent in the State of Haryana only.
20. The DGAP has further reported that whereas the Respondent had booked 1,089 flats in the pre-GST period and had received booking amount from all the home buyers in the pre-GST period, no demand had been raised by him in respect of 596 home buyers during the period 01.07.2017 to 31.08.2018 post-GST (period under investigation). Therefore, the above computation of profiteering was with respect to 493 [1089 (-) 596] flats only, wherein demands had been raised and/or payment had been received in the post-GST period. If the ITC in respect of these 596 flats was taken into account to calculate profiteering in respect of 493 flats, where payments had been received post GST, the ITC as a percentage of turnover would be distorted and erroneous. Therefore, the profiteering in respect of these 596 units was required to be calculated when the consideration would be received by taking into account the ITC proportionately.

21. The DGAP has concluded the investigation by reporting that the benefit of additional ITC of 3.73% of the turnover which had accrued to the Respondent was required to be passed on to the Applicants No. 2, 3 and other recipients. He has also claimed that the provision of Section 171 of the CGST Act, 2017 had been contravened by the Respondent in as much as the additional benefit of ITC @3.73% of the turnover (base price) received by the Respondent during the period 01.07.2017 to 31.08.2018, had not been passed on to the Applicants and other recipients. On this account, the Respondent had realized an additional amount to the tune of ₹ 12697/- each from the Applicant No. 2 and 3 (mentioned at serial no. 187 and 484 of Annexure-25) which included the profiteered amount @3.73% of turnover (base price) and GST on the said profiteered amount. The DGAP has further claimed that the investigation has revealed that the Respondent had realized an additional amount of ₹ 68,14,176/-, mentioned in Annexure-25 of the DGAP's Report, which included the profiteered amount @3.73% of the turnover (base price) and GST on the said profiteered amount in respect of 489 other recipients who were not Applicants in the present proceedings as well as Applicant No. 2 and 3. These recipients were identifiable as per the documents placed on record as the Respondent had provided their names and addresses along with unit nos. allotted to them. Therefore, this additional amount of ₹ 68,14,176/- was required to be returned to such eligible recipients. The DGAP has also mentioned that the present investigation covered the period from 01.07.2017 to

31.08.2018 and profiteering for the period post August, 2018 was not examined as the exact quantum of ITC that would be available to the Respondent in future could not be determined at this stage when the construction of the project was not completed. The DGAP's conclusion was that the provisions of Section 171(1) of the CGST Act, 2017 required that any reduction in rate of tax on any supply of goods or services or the benefit of ITC was required to be passed on to the recipients by way of commensurate reduction in prices which had been contravened in the present case.

22. The above report was considered by the Authority in its meeting held on 26.02.2019 and it was decided to hear the Applicants No. 1 to 4 and the Respondent on 13.03.2019. Sh. Rahul Chaudhary, Sh. Ashok Singal, Sh. Rameshwar Singh, Sh. Ishu Khurana and Sh. Ramesh Singh were also added as applicants on their request as they had also purchased flats from the Respondent. First hearing was held on 13.03.2019 when the Applicant No. 1 to 4 had filed written submissions. During subsequent proceedings the above Applicants had filed further written submissions on 02.04.2019, 16.04.2019, 03.05.2019 and 21.05.2019 which are summarized as below:-

i. The above Applicants stated that in addition to 4 Applicants, there were several other buyers who had alleged contravention of the provisions of Section 171 of the CGST Act 2017, against the Respondent hence, their names should be tagged with the existing 4 Applicants. Further, the order to be passed by the Authority should be made applicable to all the

buyers on whom the demand had been raised by the Respondent during the period of investigation.

- ii. The above Applicants further submitted that the Respondent has without sharing the total benefit of ITC or commensurate reduction in the price, passed on merely 4% on account of ITC and that this aspect needed to be investigated by the DGAP as the intention of the Respondent towards the same were not made clear to the buyers.
- iii. The above Applicants also stated that the criteria of raising demand as mentioned by the respondent couldn't be accepted as it was time linked as per the Policy and the demand letters did not have any date mentioned. Further, the Demand letters were not in the appropriate format as per the CGST Act, 2017.
- iv. The above Applicants also submitted that it was not legally correct to pass on the ITC benefit to the customers only when the last demand was to be raised at a time when project would be close to completion / possession. They have also claimed that the benefit of ITC should not have been appropriated by the Respondent as this was a concession given by the Government to reduce the prices of the flats to help the vulnerable section of society who could not afford high value apartments.
- v. The above Applicants have further submitted that the ratio of ITC to Turnover pre-GST and post-GST as calculated by the DGAP vide his Report dt. 21.02.2019, was erroneous. They also contended that the Respondent had only paid an amount

of Rs. 3,256/- in cash during the investigation period from 01.07.2017 to 31.08.2018, and the entire amount of the output liability of GST which was paid through ITC should be the amount of profiteering. The detailed calculations were given as below:-

Calculation of ITC Benefit for passing over to the buyers

Sl. No.	Particulars	01.07.2018 to 24.01.2018 - @ 12%	25.01.2018 to 31.08.2018- 8%	Total (Post - GST)
1	Total Taxable Value / Turnover	194,65,786	1495,54,736	1690,20,522
2	GST payable (1*rate)	23,35,890	119,64,380	143,00,270
3	Paid through ITC	23,35,890	119,61,124	142,97,014
4	Cash paid (2 minus 3)	-	3,256	3,256
5	Ratio of ITC availed/ Turnover (3 divided 1)	12%	7.998%	-
6	Re-caliberated rate (100 minus 5)	88%	92.002%	-
7	Re-caliberated price (1 * 6)	171,29,892	1375,93,348	1547,23,240
8	GST @ 12% / 8%	20,55,587	110,07,468	130,63,055
9	Commensurate demand price with GST (7 + 8)	191,85,479	1486,00,816	1677,86,295
10	Total Turnover plus GST collected originally collected from buyers (1 + 2)	2,18,01,676	16,15,19,116	18,33,20,792
11	Excess collection of demand or profiteering amount (10 minus 9)	26,16,197	129,18,300	155,34,497

- vi. The Applicants have also submitted that profiteering due to non-passing of the ITC benefit by the Respondent was 12% during the period from 01.07.2017 to 24.01.2018 and 7.998% during the period from 25.01.2018 to 31.08.2018 under Section 171 of CGST Act, 2017. Therefore, the amount of refund allowed by the Respondent @ 4% during May, 2018

should be deducted from the above amount of profiteering. They have further submitted that the total benefit of Rs. 26,16,197/- minus the amount allowed as ITC with interest @18% p.a. was payable to the buyers against the amount paid prior to 25.01.2018 and an amount of Rs. 1,29,18,300/- was reimbursable to the buyers with interest @ 18% p.a. against the amount paid after 25.01.2018 irrespective of the GST amount or demand raised.

vii. The above Applicants have requested that since the above act of profiteering had been done by the Respondent, deliberately penalty should be imposed on him alongwith the following reliefs:-

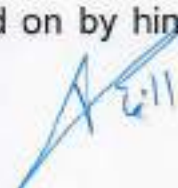
- (i) Price reduction should be ordered and
- (ii) Due compensation should be awarded to the recipients with 18% interest.

viii. The above Applicants further submitted that no deduction on account of the credit notes had been shown in the demand letters by the Respondent.

23. All the submissions made by the above Applicants were forwarded to the DGAP for his Report on the objections raised by the Applications. The DGAP in his Report dated 17.05.2019 has stated that all the documents, except those marked as confidential by the Respondent, in terms of Rule 130 of the CGST Rules, 2017, were made available for inspection to the above Applicants, in terms of Rule 129(5) of the CGST Rules, 2017. Regarding all other objections raised by the above Applicants, the DGAP stated that he

had already addressed the relevant issues in his detailed Report dated 21.02.2019.

24. The Respondent, during the proceedings, has admitted his liability relating to the passing on of the benefit of the ITC to the flat-buyers along with the interest @18% p.a. The Respondent vide his submissions dated 16.04.2019 and 03.05.2019 has claimed to have issued credit notes to his buyers for passing on the benefit of the profiteered amount. He has also averred that this was on the basis of the calculation of the profiteered amount upto 31.03.2019 as per the methodology provided in the DGAP's Report, along with the interest @18% p.a. This fact of issuance of credit notes has also been accepted by the Applicants. The Respondent has also submitted the list of all the buyers including the above Applicants to whom he had passed on the ITC benefit. The Respondent has claimed that, upto 31.08.2018 the total ITC benefit of Rs. 68,39,570/- has been passed on by him along with the applicable interest thereon to the 493 home buyers, as per the Annexure 25 of the DGAP's Investigation Report, which is inclusive of the ITC benefit of Applicant No. 2 of Rs. 12,697/- along with interest of Rs. 1496/- and Applicant No. 3 of Rs. 12,697/- along with interest of Rs. 1521/-. Since the Applicant No. 1 & 4 have not paid any amount post GST (upto 31.08.2018) and hence, there was no benefit of ITC to be passed on in respect to these two Applicants during the period of investigation. The Respondent has also claimed that the total ITC benefit of Rs. 1,90,09,595/- has been passed on by him



along with interest of Rs. 26,00,920/- to the 720 home buyers up to 31.03.2019.

25. We have carefully considered the DGAP's Report and the written submissions filed by both the Applicants and the Respondent which have been placed on record and find that following issues are to be settled in the present proceedings:-

- I. Whether there was reduction in the rate of tax on the service in question w.e.f. 01.07.2017 and w.e.f. 25.01.2019?
- II. Whether there was any net additional benefit of ITC?
- III. Whether there was any violation of the provisions of Section 171 of the CGST Act, 2017, by not passing on the benefits of reduction in the tax rate or additional ITC, by the Respondent?

26. In this connection it would be appropriate to refer to Rule 127 of the CGST Rules, 2017 which reads as under:-

"It shall be the duty of the Authority-

- i. to determine whether any reduction in the rate of tax on any supply of goods or services or the benefit of ITC has been passed on to the recipient by way of commensurate reduction in prices;
- ii. to identify the registered person who has not passed on the benefit of reduction in the rate of tax on supply of goods or services or the benefit of ITC to the recipient by way of commensurate reduction in prices;
- iii. to order;



(a) reduction in prices;

(b) return to the recipient, an amount equivalent to the amount not passed on by way of commensurate reduction in prices along with interest at the rate of eighteen percent. from the date of collection of the higher amount till the date of the return of such amount or recovery of the amount not returned, as the case may be, in case the eligible person does not claim return of the amount or is not identifiable, and depositing the same in the Fund referred to in section 57;

(c) imposition of penalty as specified in the Act; and

(d) cancellation of registration under the Act.”

27. From the various documents submitted by the Respondent it is apparent that the Respondent has constructed 1089 units out of which he has received instalments in respect of 493 units up to 31.08.2019 (Period up to the DGAP's Investigation Report). For these 493 units he has collected an amount of Rs. 16,90,20,522/- from the flat buyers after the introduction of GST.

28. We have carefully examined the submissions of the above Applicants and our observations on each of the issues raised by the Applicants are as follows:

i. The above Applicants have pleaded for granting benefit of ITC to all the flat buyers instead of only the Applicants while passing the order. In this regard, it is mentioned that in every such case, the Authority allows benefit to all the buyers of the

project and not only the Applicants. Therefore, this pleading of the Applicants is accepted.

- ii. Second pleading of the Applicants is that instead of actual ITC benefit accrued to him, the Respondent had passed on the ITC benefit at a flat rate of 4% to the buyers. In this regard, during the proceedings, the Respondent has admitted that he has passed on the ITC benefit on actual calculations as per the DGAP's investigation report along with the interest @18% p.a. This fact was also admitted by the Applicants during the proceedings. Therefore, the objection of the above Applicants is not sustainable.
- iii. The above Applicants have also raised objection that the request of the Respondent that he would pass on the benefit at the time of completion of the project was not sustainable. In this regard, the Respondent has admitted that he has passed on the ITC benefit as per the DGAP's investigation report along with the interest @18% p.a. during the proceedings. This fact has also been admitted by the above Applicants during the proceedings hence, the request of the Respondent to pass on the benefit at the time of completion of the project has become infructuous.
- iv. The above Applicants have also questioned the methodology adopted by the DGAP for calculation of the ITC benefit and suggested another methodology as has been mentioned in Para 19(v) of this order. In this regard, the explanation of the DGAP, referred to in Para 17 and Para 18 of this order, has

been found to be correct and rational as per Section 171 of the CGST Act, 2017. Hence, the objection of the Applicants is not sustainable.

- v. Further, the above Applicants have contended that the Respondent had issued credit notes to the Applicants but he had not adjusted the credit amount in the demand letters hence, credit notes had no value. In this regard, during the proceedings the Respondent has submitted that he would adjust the ITC benefit amount in the demand letters and issue the new demand letters. During subsequent hearings the Respondent has submitted that he has adjusted the ITC benefit amount in the revised demand letters and this fact was also admitted by the Applicants during the proceedings hence, the objection of the Applicants has been resolved.

29. We observe that the DGAP, in his Report, has stated as follows:

"It is clear that the input tax credit 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% and during the post-GST period (July, 2017 to August, 2018), it was 3.73%. This clearly confirms that post-GST, the Respondent has benefited from additional input tax credit to the tune of 3.73% [3.73% (-) 0%] of the turnover. Accordingly, the increase in the input tax credit availed/available, the Respondent's turnover, the recalibrated basic price and the excess collection by the Respondent (profiteering) during the post-GST period are tabulated as below:

 6/11

(Amount in Rs.)

S. No.	Particulars		Pre-GST	Post- GST		
1	Period	A	April,2016 to June,2017	July,2017 to January 24 th , 2018	January 25 th , 2018 to August, 2018	Total July, 2017 to August, 2018
2	Output tax rate (%)	B	0	12	8	
3	Ratio of CENVAT/ Input Tax Credit to Turnover as per Table - 'D' above (%)	C	0	3.73%	3.73%	3.73%
4	Increase in input tax credit availed post-GST (%)	D	-	3.73%	3.73%	3.73%
5	<u>Analysis of Increase in input tax credit:</u>					
6	Base Price collected during July, 2017 to August, 2018 (Gross Turnover)	E		19,465,786	149,554,736	169,020,522
7	GST Collected over Basic Price	F= E*12% or 8%		2,335,894	11,964,379	14,300,273
8	Total Demand collected	G=E+F		21,801,680	161,519,115	183,320,795
9	Recalibrated Basic Price	H=E*(1-D) or 96.27 % of E		18,739,531	143,974,954	162,714,485
10	GST @12/8%	I= H*12/8%		2,248,743	11,517,996	13,766,740
11	Commensurate demand price	J= H+I		20,988,275	155,492,950	176,481,225
12	Excess Collection of Demand or Profiteering Amount	K= G-J		813,405	6,026,165	6,839,570

On the basis of the aforesaid CENVAT/input tax credit availability pre and post-GST and the details of the amount collected by the Respondent from the Applicants and other home buyers during the period 01.07.2017 to 24.01.2018, the amount of benefit of input tax credit that needs to be passed on by the Respondent to the recipients or in other words, the profiteered amount comes to ₹ 8,13,405/- which includes 12% GST on the base profiteered amount of ₹ 7,26,255/-. Further, the amount of benefit of input tax credit that needs to be passed on by the Respondent to the

recipients or in other words, the profiteered amount during the period 25.01.2018 to 31.08.2018, comes to ₹ 60,26,165/- which includes 8% GST on the base profiteered amount of ₹ 55,79,782/-. Therefore, the total profiteered amount during the period 01.07.2017 to 31.08.2018 comes to ₹ 68,39,570/- which includes GST (@ 12% or 8%) on the base profiteered amount of ₹63,06,036/-. It is observed that the Applicant No. 1 and 4 have not paid any amount post GST and hence, there is no benefit of ITC to be passed on to them. The above amount is inclusive of ₹ 25394/- (including GST) which is the profiteered amount in respect of the Applicant No. 2 & 3.

30. It is observed that the Payment Schedule submitted by the Respondent is as follows:

Time of Payment	% of the total price payable
At the time of submission of the Application for allotment	5% of the total price
Within 15 days of the date of issuance of offer of Allotment letter	20% of the total price
Within 06 months of the date of issuance of offer of Allotment letter	12.5% of the total price
Within 12 months of the date of issuance of offer of Allotment letter	12.5% of the total price
Within 18 months of the date of issuance of offer of Allotment letter	12.5% of the total price
Within 24 months of the date of issuance of offer of Allotment letter	12.5% of the total price
Within 30 months of the date of issuance of offer of Allotment letter	12.5% of the total price
Within 36 months of the date of issuance of offer of Allotment letter	12.5% of the total price

As per the payment schedule, buyers had to pay 5% of the total amount at the time of booking, i.e. at the time of submission of the application for allotment and the first draw for allotment was held on 31.03.2017 during the pre-GST period. Therefore, the Respondent had received the booking amount on or before 31.03.2017 which constitutes the pre-GST Turnover of the Respondent. It is further observed from the documents placed on record that the calculation of profiteering prepared by the DGAP is based on the fact that the ITC availed by the Respondent during pre-GST period, i.e. upto 30.06.2017, was zero and the value of Turnover for pre-GST period was positive hence, the ratio of ITC/Turnover comes out as zero. Further, we observe from the DGAP's Report that the ratio of ITC/Turnover for post-GST period (July, '17 to August, '18) comes out as 3.71%. Therefore, in the context of the findings of the DGAP, which have been carefully considered the fact that the Respondent has accepted the findings of the Investigation Report and passed on the ITC benefit to his recipients, the Authority finds no reason to disagree with the investigation conducted and the consequent Report of the DGAP.

31. Therefore, this Authority, under Rule 133(3)(a) of the CGST Rules, 2017, orders that the Respondent shall reduce the price to be realized from the buyers of the flats commensurate with the benefit of ITC received by him as has been detailed above. The Respondent's Annexures dated 15.04.2019 and 03.05.2019, which comprise of the details of payments made through various modes have been taken on record. As per this Annexure the Respondent has paid to the Applicant No. 1 to 4 and 716 other home buyers the entire profiteered amount.

through credit notes and letters to this effect have been sent to all these home buyers as has been shown in the Annexures. Needless to mention that all such refunds/adjustments shall be made, incorporating the interest @ 18% from the date of the receipt of the amount by the Respondent from the buyers till the date the due amount is refunded/adjusted within a period of three months from the date of this order. Since the present investigation is only up to 31.08.2018 any benefit of ITC which accrues subsequently shall also be passed on to the buyers by the Respondents. In case this benefit is not passed on the Applicants or any other buyer shall be at liberty to approach the State Screening Committee Haryana for initiating fresh proceedings under Section 171 of the above Act against the Respondents. 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 future.

32. It is evident from the above that the Respondent has denied benefit of ITC to the buyers of the flats being constructed by him under the above Policy in contravention of the provisions of Section 171 (1) of the CGST Act, 2017 and has thus realized more price from them than he was entitled to collect and has also compelled his consumers/buyers to pay more GST than that they were required to pay and therefore, he is liable for imposition of penalty. Accordingly, a Show Cause Notice be issued to him directing him to explain why the penalty prescribed under Section 171(3A) of the above Act read with rule 133(3)(d) of the CGST Rules, 2017 should not be imposed on him.

33. Further in terms of Rule 136 of the CGST Rules 2017, the Authority directs the Commissioner of CGST/SGST Haryana to monitor the implementation of this order under the supervision of the DGAP by ensuring that the amount profiteered by the Respondent, as ordered by the Authority, is passed on to the buyers. A report in compliance of this order shall be submitted to this Authority by the Commissioner CGST /SGST through the DGAP within a period of 4 months from the date of receipt of this order.
34. A copy each of this order be supplied to the Applicants, the Respondent, Commissioners CGST /SGST as well as Principal Secretary (Town & Planning) Government of Haryana for necessary action. File be consigned after completion.



Certified copy

(A.K. Goel)
Secretary NAA

Sd-
(B. N. Sharma)
Chairman

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

-Sd-
(R. Bhagyadevi)
Technical Member

Sd/-
(Amand Shah)
Technical Member

F.No.22011/NAA/05/Ocean/2019

Dated: 06.11.2019

1. M/s Ocean Seven Buildtech Pvt. Ltd., B4-505,506, Spaze I Tech Park, Sohna Road, Sec-49, Gurugram, Haryana- 122018.
2. Director General Anti-Profiteering, Central Board of Indirect Taxes & Customs, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001,
3. Shri Hardev Singh, 233-234, Ground Floor, Pocket 18, Sector 24, Rohini, Delhi- 110085.
4. Shri Vaneet Malhotra, WZ-195 F/4, Upper Second Floor, Street no. 4, Virender Nagar, Janakpuri, New Delhi- 110058.

5. Smt. Martha Paohaonamai, A-171, Sec-15, Noida, Gautam Budh Nagar, Uttar Pradesh, Noida- 201301.
6. Ms. Megha Mehra, A-401, Sector-19, Noida.
7. Sh. Rahul Chaudhary, rahulch_4454@yahoo.com.
8. Sh. Ashok Singhal, ashoksingal0202@gmail.com.
9. Sh. Rameshwer Singh, rameshwarurp@gmail.com.
10. Sh. Ishu Khurana, ishukhurana@live.com.
11. Principal Secretary to the Govt. of Haryana, Town & Country Planning Department, Haryana, SCO 71-75, Sector-17C, Chandigarh-160017,
12. Commissioner, Commercial Tax, Vanijya Bhawan, Plot No. 1-3, Sector-5, Panchkula, Haryana-134151.
13. Chief Commissioner, CGST, C.R. Building, I.P. Estate, New Delhi – 110009.
14. NAA website/Guard File.


6/11/19