

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

Case No.	33/2019
Date of Institution	27.02.2019
Date of Order	24.05.2019

**In the matter of:**

1. Ms. Hermeet Kaur Bakshi, E-mail id [bhawinderbakshi@gmail.com](mailto:bhawinderbakshi@gmail.com)
2. Director General of Anti-Profiteering, Central Board of Indirect Taxes & Customs, 2<sup>nd</sup> Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.

Applicants

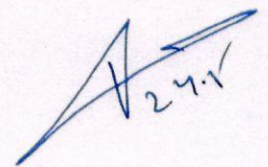
**Versus**

1. M/s Conscient Infrastructure Pvt Ltd. (GSTIN: 06AAACB0280G1Z7),  
10th Floor, Tower D, Global Business Park, Gurugram, Haryana-  
122002.

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) Sh. Amit Srivastava Superintendent, for the Applicant 2.
- 3) Sh. Ajay Gupta, Authorised Representative for the Respondent.

### ORDER

1. This Report dated 27.02.2019, has been received from the Applicant No. 2 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 complaint dated 26.09.2018 was filed before the Standing Committee on Anti-profiteering, by the Applicant No.1, alleging profiteering by the Respondent in respect of purchase of a flat in the Respondent's project "Habitat-78" situated in Sector-78, Faridabad, Haryana. The above Applicant had alleged that the Respondent had charged 12% GST on the demand raised on 17.04.2018, i.e., after 25.01.2018, when the GST rate was reduced from 12% to 8% in case of affordable housing projects and also that the benefit of Input Tax Credit (ITC) had not been passed on to her by the Respondent by way of commensurate reduction in price. Along with the application, the above Applicant had submitted copies of her correspondences with the Respondent.
2. The above application was examined by the Standing Committee on Anti-profiteering in its meeting held on 13.12.2018 and its minutes were

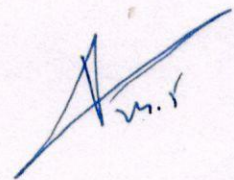
forward to the DGAP for detailed investigation under Rule 129 (1) of the CGST Rules, 2017.

3. The DGAP on receipt of the above minutes had called upon the Respondent vide notice dated 14.01.2019 to submit his reply as to whether he admitted that he had charged 12% GST post 25.01.2018 when the GST rate on affordable housing projects was reduced from 12% to 8%, vide Notification No 01/2018 Central Tax (Rate) dated 25.01.2018 and whether the ITC benefit was passed on to his recipients and also asked him to suo-moto determine the quantum of benefit which was not passed on. The Respondent had submitted replies vide letters dated 23.01.2019, 28.01.2019 and 06.02.2019 stating that the project "Habitat-78" was being constructed and developed under Affordable Housing Scheme of the Government of Haryana. Under the above Scheme, the flats were allotted to the successful allottees by way of draw of lots, which took place in the presence of the Government officials. The draw for the selection of the allottees in respect of this project had taken place on 17.10.2017, i.e., after the implementation of the GST on 01.07.2017 and the agreement for sale of the flat between the Applicant and the Respondent was executed on 17.11.2017.

4. The Respondent had further submitted that the service rendered by him by way of construction and development of the project "Habitat-78" was not in existence during the pre-GST regime and that the project was launched after the implementation of GST. There was no sale or booking of the flats of the above project in the pre-GST regime and hence, the question of price revision did not arise. He further stated that the anti-

profiteering provisions would apply only to services which were being supplied before the introduction of GST, to ensure that the benefit of additional ITC (which earlier formed part of the cost but now available as credit) or the benefit of reduction in tax rate, was not retained by the supplier but passed on to the recipients by way of price reduction.

5. The Respondent had also claimed that for revising/reducing price, there had to be a pre-GST reference price. The flats which had no sale or even a single booking during the pre-GST regime and the construction of which had commenced much after the implementation of GST, couldn't be subjected to price revision or reduction under the anti-profiteering provisions. He has also stated that as per the press release issued by the Central Board of Excise and Customs with reference to the "reduced liability of tax on complex, building, flats under the GST", the anti-profiteering provisions would apply to those goods and services which were earlier supplied by the registered person at a price that comprised of input taxes as cost, which could now be claimed as credit or whose rates of tax had been reduced with the introduction of GST and such benefits must be passed on to the customers in the form of price reduction. Whereas in this case, the Respondent was not supplying any service to the above Applicant earlier and the price for the flats had been offered for the first time in the GST regime after considering the output tax and ITC implications in the GST regime. The flats sold by the Respondent were not under construction in the pre-GST regime and the construction had commenced only after the introduction of GST.



6. The Respondent had also stated that the Applicant was allotted the flat in the month of November, 2017 and hence, the Applicant was under an obligation to purchase the flat at the price offered by the Respondent for the first time under the GST regime. The flat sold by the Respondent had no price history of pre-GST regime and hence, the question of revising the price did not arise. He had also stated that the Applicant had been informed that the said project was launched after the introduction of GST and hence, the anti-profiteering provisions would not apply to the present case and that she was fully satisfied with the explanation of the Respondent and had withdrawn her complaint. He had also claimed that the Applicant was no more an allottee in the said project as she had surrendered the flat and therefore he had requested for closure of the investigation.
7. The Respondent had also stated that the Applicant's allegation regarding charging of excess GST @ 12% even after reduction in the GST rate for affordable housing post 25.01.2018 was also incorrect as the Respondent had charged GST @ 8% post 25.01.2018 and in support of his claim submitted all the demand letters issued in the name of the above Applicant out of which the demand letter dated 16.04.2018 showed that he had charged GST @ 8%. The Respondent had also submitted that the misunderstanding was because of the fact that he had charged GST @ 12% on the taxable value (2/3rd of the total value) which was effectively 8% of the total demand raised which was evident from the letter dated 16.04.2018 where he had shown the total value as Rs. 3,21,124/- and the taxable value as Rs. 2,14,083/- (2/3rd of the total value of Rs. 3,21,124/-), separately for calculating the tax liability and

charged GST @ 12% on the taxable value which was 2/3rd of the total value shown in the above letter.

8. The Respondent had further stated that the Applicant was convinced that the GST was correctly charged but she had surrendered the above unit and withdrawn her complaint vide her letter dated 18.01.2019. The Respondent had also requested that as the application which was the basis of the present proceedings had been withdrawn, the present proceedings should also be dropped.
9. The Respondent had also submitted that the first allotment of the units in the project "Habitat-78" was done in November, 2017 and the construction had commenced only in January, 2018. He had further submitted that all the contracts for construction were agreed upon and executed after the GST was implemented and all materials required for the construction of the project were also procured post January, 2018. The Respondent had also submitted that the aforesaid project was not an on-going project on which there would be a saving on tax component due to the advent of GST and all the pricing and construction decisions had been taken post GST Implementation. The Respondent had therefore requested to close the proceedings as the provisions of Section 171 of the CGST Act, 2017 were not applicable in his case.
10. The DGAP has also submitted that based on the Respondent's replies the project "Habitat-78" was not in existence before the implementation of GST and was launched only in the GST regime and the agreement with the above Applicant was also executed on 17.11.2017. The DGAP

on scrutiny of the documents (Home buyer's list and Agreement with the above Applicant dated 17.11.2017) submitted by the Respondent, has found that there was no price history of the units sold in the pre-GST era which could be compared with the post-GST base price to determine whether there was any profiteering or not. The Report has also stated that the draw of lots, allotment of units and receipt of payments had taken place post-GST and the construction also commenced in January, 2018 and therefore there was no pre-GST tax rate or ITC which could be compared with the post-GST tax rate and ITC. The DGAP's Report also stated that the Respondent must have taken into consideration the benefit of ITC available to him post implementation of GST, while fixing the base price. The Report has further claimed that the Respondent had reduced the GST rate from 12% to 8% w.e.f 25.01.2018, in terms of Notification No. 01/2018 Central Tax (Rate) dated 25.01.2018. Therefore the DGAP in his Report had concluded that the provisions of Section 171 of the CGST Act, 2017 would not be attracted.

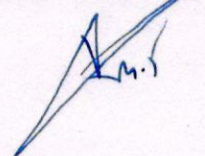
11. The above report was considered by the Authority in its sitting held on 05.03.2019 and it was decided to hear the above Applicant on 26.03.2019 but the Applicant did not appear on the stipulated date and informed over phone that as she had already withdrawn her application and also surrendered her flat in the said project therefore she may be exempted from hearing. Later on the Respondent was heard on 07.05.2019 where he was represented by Sh. Ajay Gupta, Authorised Representative and the DGAP was represented by Sh. Amit Srivastava

Superintendent. The Respondent during the hearing submitted that the project 'Habitat-78' was launched after implementation of GST and hence anti-profiteering provisions did not apply on the said project. The Respondent further vide letter dated 15.05.2019 stated that he had one commercial project situated in Sector 109 Gurugram which was expected to be completed by March 2020. The letter also stated that the Respondent was not interested in any further personal hearings in terms of Rule 133 (2) of the CGST Rules, 2017 and his submissions made on 07.05.2019 should be taken on record.

12. We have carefully examined the DGAP's report and the written submissions filed by the Applicant No.1 and the Respondent placed on record. The issues to be decided by this Authority are as follows:-

- I. Whether there was any increased benefit of ITC w.e.f. 01.07.2017.?
- II. Whether there was reduction in the rate of tax on the service in question w.e.f. 25.01.2018?
- III. Whether there was any violation of the provisions of Section 171 of the CGST Act, 2017 by not passing on the benefit?

13. It is revealed from the record that the Central Government had levied 18% GST (effective rate was 12% on account of 1/3<sup>rd</sup> abatement on the land value) on construction service vide Notification No. 11/2017- Central Tax (Rate) dated 28.06.2017 and allowed ITC on a number of Goods and Services which were not allowed this benefit before implementation of GST. Further, the effective GST rate on construction service in the case of





affordable and low cost housing was further reduced from 12% to 8% vide Notification No. 1/2018-Central tax (Rate) dated 21.01.2018.

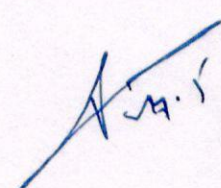
14. From the various documents submitted by the Respondent and the DGAP's Report it is observed that the service rendered by the Respondent by way of construction of the project "Habitat-78" was not in existence during the pre-GST regime and that the project was, in fact, launched only after the implementation of GST. Annexure 8 of the DGAP's Report clearly shows that buyer's agreement with the Applicant No. 1 for the Apartment No. A4806 was signed on 17<sup>th</sup> November 2017 where it was written that the allotment was made vide letter dated 01.11.2017. The buyer's agreement also states that 'the company had since registered the project under the provisions of the Real Estate (Regulation and Development) Act, 2016 read with the Rules notified there under by the Haryana Real Estate Regulatory Authority on 22.08.2017 under registration no. 78 of 2017'. The Annexure C - Schedule of Payments attached to this buyer's agreement also shows the payment description as follows:-

Sr. No.	Payment Description			Amount in Rs.
	As per policy	Due Dates		
1	On application			128000
2	Within 15 days from the date of allotment	01.11.2017	25% of the total cost of the flat less application amount	514247
3	Within 6 months of allotment	01.05.2018	12.5% of the total cost of the flat	321124
4	Within 12 months of allotment	01.11.2018	12.5% of the total cost of the flat	321124
5	Within 18 months of allotment	01.05.2019	12.5% of the total cost of the flat	321124
6	Within 24 months of allotment	01.11.2019	12.5% of the total cost of the flat	321124
7	Within 30 months of allotment	01.05.2020	12.5% of the total cost of the flat	321124
8	Within 36 months of allotment	01.11.2020	12.5% of the total cost of the flat	321124
	Total			2568988

15. From the above payment schedule it is clear that the project was launched only after the implementation of GST. As there was no comparative pre GST ITC that was accumulated or utilized by the Respondent the question of profiteering does not arise.

16. The main allegation of the above Applicant was that GST @12% was charged instead of 8%. However as noticed from the demand letter dated 16.04.2018 which the above Applicant had quoted the total value was shown as Rs. 3,21,124/- and the taxable value was shown as Rs. 2,14,083/- (2/3rd of the total value of Rs. 3,21,124/, separately for calculating the tax liability and the Respondent had charged GST @ 12% on the taxable value which was 2/3rd of the total value. Therefore, the effective rate of GST was 8% on the total value of Rs. 3,21,124/-, which clearly shows that the Respondent had reduced the GST rate from 12% to 8% w.e.f 25.01.2018, in terms of Notification No. 01/2018 Central Tax (Rate) dated 25.01.2018. It is also observed that based on the above clarification the Applicant No. 1 has admitted her mistake and withdrawn her complaint. She has also declined to be heard as she had surrendered the flat.

17. In view of the above facts it is clearly established that the Respondent had not contravened the provisions of Section 171 of the CGST Act, 2017, hence we find no merit in the application filed by the above Applicants and the same is accordingly dismissed.



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

sd/-

(B. N. Sharma)

Chairman

sd/-

(J. C. Chauhan)

Technical Member

sd/-

(R. Bhagyadevi)

Technical Member

sd/-

(Amand Shah)

Technical Member

Certified Copy



A.K. Goel

(Secretary, NAA)

F. No.22011/NAA/10/conscient/2019

Date: 24.05.2019

Copy To:-

1. M/s Conscient Infra Pvt. Ltd., 10<sup>th</sup> floor, Tower-D, Global Business Park, Gurugram, Haryana.
2. M/s Hermeet Kaur Bakshi email id – bhawinderbakshi@gmail.com.
3. Director General Anti-Profiteering, Central Board of Indirect Taxes & Customs, 2<sup>nd</sup> Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.
4. Guard File.

Certified Copy



A.K. Goel

(Secretary, NAA)

