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BEFORE THE NATIONAL ANTI-PROFITEERING AUTHORITY

UNDER THE CENTRAL GOODS & SERVICES TAX ACT, 2017

Order No.	45/2019
Date of Institution	01.04.2019
Date of Order	28.06.2019

In the matter of:

1. Shri Arjun Kumar Parwani, L-6, Prasad Nagar-2, New Delhi – 110005.
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 Signature Builders Pvt. Ltd., Regd. Office 1309, 13th Floor, Dr. Gopal Das Bhawan, 28 Barakhamba Road, Connaught Place, New Delhi-110001.

Respondent

Quorum:-

Sh. B. N. Sharma, Chairman

Sh. J. C. Chauhan, Technical Member

Ms. R. Bhagyadevi, Technical Member

Sh. Amand Shah, Technical Member

Present:-

1. Shri Arjun Kumar Parwani, Applicant No. 1 in person.
2. Sh. Bhupinder Goel, Assistant Director (Costs) and Sh. Manoranjan, Assistant Commissioner for the Applicant No. 2.
3. Sh. Manish Garg, Chief Financial Officer and Sh. Rakesh Kataria, Advocate for the Respondent.

ORDER

1. A Report dated 30.10.2018 was furnished by the Applicant No. 2 i.e. the Director General of Anti-Profiteering (DGAP) to this Authority, after detailed investigation under Rule 129 (6) of the Central Goods & Service Tax (CGST) Rules, 2017. The brief facts mentioned in the above Report were that the Haryana State Screening Committee on Anti-Profiteering, vide the minutes of its meeting held on 20.06.2018 had forwarded an application dated 08.04.2018 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 in his application that the Respondent had resorted to profiteering in respect of supply of construction services related to purchase of Flat No. A5/907 in his project Solera-2 situated at Sector-107, Gurugram, Haryana. The Applicant No. 1 had claimed that as per the Affordable

Housing Policy-2013 (AHP) of the Haryana Government, the basic sale price of the above flat in the pre-GST regime was fixed as Rs. 4000/- per square foot (sq. ft.) which was required to be recalibrated after implementation of the GST by passing on the additional benefit of Input Tax Credit (ITC) which had become available to the Respondent. The Applicant No. 1 had also supplied copies of the demand letters issued by the Respondent and of the correspondence exchanged between the Applicant No. 1 and the Respondent on this issue. The above application was considered by the Standing Committee on Anti-Profiteering in its meetings held on 07.08.2018 and 08.08.2018 and it was recommended to the DGAP for conducting detailed investigation.

2. The DGAP had issued Notice to the Respondent on 12.09.2018 under Rule 129 of the CGST Rules, 2017 asking the Respondent whether he admitted that the benefit of ITC had not been passed on to the Applicant No. 1 by way of commensurate reduction in price of the flat and incase it was so, to suo moto determine the quantum of the ITC the benefit of which had been denied thereof and mention it in his reply and to produce all necessary evidence. The Respondent was also afforded opportunity of inspecting the non-confidential evidence/information supplied by the Applicant No. 1 between 18.09.2018 and 20.09.2018 but the Respondent had not availed it. Similar opportunity was also given to the Applicant No. 1 by the DGAP vide email dated 17.10.2018 who had inspected the documents furnished by the Respondent on 22.10.2018.

3. The DGAP vide his Report dated 30.10.2018 had stated that the Respondent had submitted replies vide his letters dated 25.09.2018

and 27.09.2018 in which he had submitted that the project Solera-2 was being executed by the Respondent under the AHP framed by the State of Haryana. The flats constructed under the AHP were required to be allotted by draw of lots which took place in the presence of the representatives of the above Government. The Respondent had further submitted that the draw for the selection of the allottees for the above project had taken place on 16.11.2017, i.e., after coming in to force of the GST w.e.f. 01.07.2017 and the Applicant No. 1 had paid the application fee by way of security deposit for participation in the process of allotment vide Cheque No. 004057 dated 11.08.2017 drawn on the State Bank of India which was encashed on 18.08.2017 and the Applicant No. 1 was allotted the flat on 20.11.2017. The DGAP had further stated that the service of construction and development of the project Solera-2 was not in existence during the pre-GST period as the project was started after the implementation of GST by the Respondent and hence there was no sale of the flats in the pre-GST regime and therefore, the issue of recalibration of price did not arise. The DGAP had also submitted that the Respondent had claimed that the anti-profiteering provisions could apply only in respect of those services which were being supplied before the introduction of the GST, so that the benefit of additional ITC which earlier formed part of the cost but which had now become available as ITC to the suppliers was not used by them but passed on to the recipients by commensurate reduction in the prices. The Respondent had also claimed that the reduction in price could only occur if the goods or services were already in existence and available for supply during the pre-GST period and hence the anti-profiteering provisions could not

be applied in respect of a product or service which was not in existence prior to the coming in to force of the GST and was supplied for the first time in the post-GST period as there had to be a pre-GST reference price for reducing the price. The Respondent had further submitted that the flats which had not been sold or even booked during the pre-GST regime and the construction of which had commenced much after the implementation of the GST, were not liable to price reduction under the anti-profiteering provisions. The Respondent had also claimed that as per the press release issued by the Central Board of Indirect Taxes & Customs (CBIC) on "reduced liability of tax on complex, building, flats under the GST", the anti-profiteering provisions could only apply to those goods and services which were earlier supplied by a registered person at a price that comprised of input taxes as cost, on which now ITC could be claimed or the rate of tax in respect of which had now been reduced after coming in to force of the GST and both these benefits were required to be passed on to the recipients in the form of price reduction. The DGAP had also reported that the Respondent had claimed that he was not supplying any service to the Applicant No. 1 earlier and the price for the flat had been offered for the first time in the post-GST period after taking in to account the output tax and the benefit of ITC and since the flats sold by the Respondent were not under construction in the pre-GST regime and the construction had commenced after introduction of GST and hence no price reduction was required to be made. The Respondent had also claimed that the Applicant No. 1 was given allotment in the month of November, 2017 and the payment was made for the first time by him in the month of

August, 2017 and therefore, the Applicant No. 1 was bound to purchase the flat at the price offered by the Respondent for the first time under the post-GST period and since the flat sold by the Respondent had no price history there was no question of revising the price. The DGAP had also intimated that the Respondent had further claimed that he had already informed the Applicant No. 1 that the above project had been started after coming in to force of the GST and therefore, the anti-profiteering provisions did not apply and the Applicant No. 1 being fully satisfied with his contention had withdrawn his application and hence the present investigation should be closed.

4. The DGAP had also submitted that the Haryana State Screening Committee had claimed that the benefit of ITC had not been passed on by the Respondent. The Applicant No. 1 had also alleged that the Respondent had not reduced the price of the flat allotted under the AHP by passing on the benefit of ITC to him. The DGAP had further submitted that the Applicant No. 1, vide his letter dated 21.09.2018 had intimated that he had applied for the flat on the basis of an advertisement of the project launch issued by the Respondent in the Times of India on 24.07.2017 and the flat was allotted to him through the draw of lots held on 16.11.2017. The Applicant No. 1 had also stated that application fee for participation in the draw of lots was deposited by him on 11.08.2017 vide Cheque No. 004057 dated 11.08.2017 and the flat was allotted to him on 20.11.2017 on the basis of the draw of lots. The Respondent had further claimed that the above Applicant was fully convinced that since the price charged for the above flat pertained to the new project to be developed and constructed by the Respondent after implementation of the GST, the

anti-profiteering provisions would not be applicable, as stated by the DGAP in his Report.

5. The DGAP had also contended that the anti-profiteering provisions would not apply to the project Solera-2 as it was not in existence before the implementation of the GST and was started after coming in to force of the GST. The DGAP had further contended that the Respondent had also stated that the draw of lots for selection of the allottees had taken place on 16.11.2017, although the Applicant No. 1 had made payment of security deposit on 11.08.2017, however, the unit was allotted to him only on 20.11.2017 and hence, all the events had taken place during the post-GST period and there was no sale or even booking of the flats in the pre-GST regime. The DGAP had also submitted that after scrutiny of the documents submitted by the Respondent, it was revealed that the project Solera-2 was indeed started in the post-GST regime and there was no price history of the flats sold in the pre-GST period which could be compared with the post-GST base price to determine profiteering. He had further submitted that as per para 5 of the AHP (Annexure-A) notified by the Haryana Government on 19.08.2013, the maximum rate per sq. ft. of carpet area which could be charged from the allottes was Rs. 4000/- per sq. ft. however, the suppliers of the construction services were at liberty to fix their base price subject to the ceiling of Rs. 4000/- per sq. ft. The DGAP had also claimed that in the present case, the advertisement for start of the project, the pre-booking payments, draw of lots, allotment of units and receipt of payments had taken place post-GST and hence there was no pre-GST tax rate or ITC which could be compared with the post-GST tax rate and ITC which the

Respondent could have taken in to account to pass on the benefits of tax reduction or ITC which had become available to him post coming in to force of the GST.

6. The DGAP had finally submitted that the provisions of Section 171 (1) of the CGST Act, 2017 would be attracted in case there was reduction in the rate of tax or an increase in the benefit of ITC, however, in the instant case, since the project was started after implementation of the GST w.e.f. 01.07.2017, there was no pre-GST tax rate or ITC availability that could be compared with the post-GST tax rate and ITC, to determine whether there was any benefit that was required to be passed on by way of reduced price and hence, the provisions of Section 171 (1) of CGST Act, 2017 pertaining to profiteering, had not been violated.

7. The above Report was considered by the Authority in its sitting held on 13.11 2018 and it was decided to accord opportunity of hearing to the Applicant No. 1 & 2 on 28.11.2018 but both the Applicants were not present during the above hearing. They were again called for hearing on 11.12.2018 during which the Applicant No. 1 was present in person while Sh. Manoranjan, Assistant Commissioner was present for the DGAP. During the course of the hearing the Applicant No. 1 orally submitted that the impact of GST rate reduction on the Affordable Housing Schemes from 18% to 12% w.e.f. January 2018 had not been discussed in the DGAP's Report. Accordingly, the Report dated 30.10.2018 was referred back by the Authority vide its order dated 14.12.2018 to the DGAP for further investigation under Rule 133 (4) of the CGST Rules, 2017 on the ground that nothing had been discussed in the Report regarding ITC aspect and the impact of

GST rate reduction on the affordable housing projects from 18% to 12 % w.e.f. January, 2018. In compliance of the order dated 14.12.2018 the DGAP has furnished a fresh Report dated 29.03.2019 which has been received on 01.04.2019, as per the provisions of Rule 133 (4) of the above Rules, in which he has submitted that all the events pertaining to the above project viz. advertisement for the project launch, pre- booking payments, draw of lots, allotment of units and receipt of the entire payments etc. had taken place in the post-GST period and there was no sale or even booking of the flats in the pre-GST period and hence, there was no pre-GST tax rate and ITC which could be compared with the post-GST tax rate and the ITC. He has also submitted that the provisions of Section 171 (1) of the CGST Act, 2017 were only attracted when there was reduction in the rate of tax or increase in the benefit of ITC. He has further submitted that in this case, since the project was started after coming in to force of the GST w. e. f. 01. 07.2017, there was no pre-GST tax rate or ITC which could be compared with the post-GST tax rate and the ITC to come to the conclusion that there was benefit which was required to be passed on by way of commensurate reduction in price. He has further submitted that on perusal of the application it was revealed that the above Applicant had only alleged that the Respondent had not recalibrated the cost of the flat booked under the AHP, to pass on the benefit of ITC and he had not made any allegation of reduction in the rate of GST from 12% to 8% w.e.f. 25.01.2018. The DGAP has also stated that perusal of

Annexure-5 attached with the Report dated 30.10.2018 showed that the Respondent had charged 12% GST on the base price of Rs. 4,000/- per sq. ft., till 24.01.2018 and 8% GST on the above price w.e.f. 25.01.2018 and hence there had been no profiteering due to reduction in the GST rate form 12% to 8% w.e.f. 25.01.2018. He has further stated that due to the above reasons the provisions of Section 171(1) of the CGST Act, 2017 had not been violated.

8. This Report was considered by the Authority in its sitting held on 11.04.2019 and it was decided to accord opportunity of hearing to the Applicants as well as the Respondent on 26.04.2019 so that a reasoned and equitable order could be passed as the Applicant No. 1 had been vehemently claiming that he had been denied the benefit of ITC by the Respondent and the Respondent had resorted to profiteering in violation of the provisions of Section 171 (1) of the above Act. On 26.04.2019 Sh. Manish Garg, Chief Finance Officer and Sh. Rakesh Kataria, Advocate were present for the Respondent, Sh. Arjun Kumar Parwani Applicant No. 1 was present in person while Sh. Bhupinder Goyal, Assistant Director (Costs) was present for the DGAP.

9. The Applicant No. 1 vide his submissions dated 22.04.2019 filed on 26.04.2019 has stated that the flat buyers were eligible to get the benefits that the builders were getting through the ITC due to the new tax regime which had come in to force w.e.f. 01.07.2017. He has also submitted that the maximum price under the AHP at Gurugram in Haryana was Rs. 4000/- per sq. ft. but after implementation of the GST w.e.f. 01.07.2017, the above rate had not been recalibrated

although the flat buyers were entitled to get the benefit of ITC. The Applicant No. 1 has also quoted the directive dated 07.02.2018 issued by the Ministry of Finance in which the builders were asked not to charge any GST from the buyers of houses under the AHP as the effective GST rate on such projects was 8% which could be adjusted against the ITC as sufficient ITC was available to pay the output GST and the builders were not required to pay the GST on the construction services. The Applicant No. 1 has also claimed that the GST Council had clarified definition of the ongoing projects as those projects where the construction and the actual booking had started before 01.04.2019 but which would not be completed by 31.03.2019. He has further claimed that the GST Council in its meeting held on 19.03.2019 had permitted the developers to choose between the old tax rates and the new tax rates on or before 10.05.2019 for the under construction residential projects so that the ITC issues could be settled. He has also contended that if the developers opted for the new tax rates, they would have to pay 1% GST on the construction of affordable houses and 5% GST on all other housing projects without ITC and if they opted for old rates, they were required to pay GST @ 8% on affordable houses and @ 12 % on other housing projects with ITC. He has further contended that the Respondent had intimated him vide his email dated 04.04.2019 that he had chosen to charge GST at the existing rate of 8% on the sale of affordable houses in his Solera-2 project and therefore, it was clear that the Respondent would transfer the benefit of ITC to the buyers from the very beginning in the same manner @ 8%. He has also argued that if no ITC benefit was to be given there was no point in paying GST at the higher rate of 8%

instead of 1% which was contrary to the GST Rules framed by the Govt. He has also stated that he had received demand letter dated 01.04.2019 for Rs. 3,17,664/- with 8% GST and no benefit of ITC had been passed on to him till date and in case this ITC benefit was passed on to the buyers, it would not mean that the Respondent was paying it from his own pocket.

10. Through his submissions dated 29.04.2019, the Applicant No. 1 has stated that as per the Haryana Building By Laws only 4% of the total land could be used by the developer for construction of commercial shops within the same premises therefore, he would clarify that 4% of the commercial area of the Solera-2 project had already been got sanctioned by the Respondent in January, 2017 which was clubbed with the commercial complex of Solera-1 project and a few or all the shops had already been sold by the Respondent immediately. He has also claimed that the Solera-1 & Solera-2 were one and the same project in the same premises as per the approved building plan and there was no question of Solera-2 project being different than the Solera-1 project. He has also enclosed copies of the Sanctioned Building Plans of both the projects. He has further claimed that the facts of the case could not be ascertained unless proper Audit/Investigation of the books of the Respondent was carried out as the Respondent was continuously violating the instructions of the CBIC, Ministry of Finance. He has also claimed that he was a retired Govt. servant who had invested a large portion of his retirement benefits for purchase of a shop and a flat in the same premises.

11. The Applicant No. 1 vide his further submissions dated 16.05.2019 has stated that in reply to FAQ No. 16 the CBIC, Government of India,

Ministry of Finance, Department of Revenue {Tax Research Unit) vide F. No. 354/32/2019-TRU dated 14.05.2019, had clarified that no additional GST was required to be paid if a buyer had booked an apartment prior to 01.04.2019 and paid part consideration to the developer, if the developer decided to opt for the new scheme for the ongoing project. He has also stated that from the instances given by the CBIC, it was clear that whatever the developer was getting towards the ITC it should be passed on to the home buyers if the developer decided to opt for the old scheme for the ongoing projects as the definition of on-going project had already been clarified by the CBIC. The Applicant No. 1 has also claimed that the Solera-1 and the Solera-2 were one and the same project in the same premises and there was no question of Solera-2 being a different project from the Solera-1 project. He has further claimed that the Respondent had launched his new project in the 1st week of this month at Sector 37-D, Gurugram for which the Respondent could not charge more than Rs. 4000/- per sq. ft.+1% GST. The Applicant No. 1 has also queried whether the Respondent would get the construction material at cheaper rates for the new project than the Solera-2 project which was to be completed in September, 2021.

12. The Respondent vide his submissions dated 16.05.2019 has stated that he had started the Affordable Housing Project Solera-2 on 24.07.2017 after getting the building plans approved from the Government of Haryana on 07.06.2017 under the AHP. He has also stated that an advertisement was published in the Times of India on 24.07.2018 inviting applications for allotment of the flats under the AHP from the prospective buyers along with the application fee equal

to 5% of the cost of the unit and the draw of lots for allotment was held on 16.11.2017, under the supervision of a committee constituted by the State of Haryana and the successful applicants were given letters of allotment by the Respondent. He has further stated that the Builder-Buyer agreements containing all the terms & conditions of the allotment were executed on 13.12.2017 between the Respondent and the successful applicants. He has also claimed that the consideration for the flat was fixed @ 4000/- per sq. ft. on the carpet area and the balcony area was charged @ 500/- per sq. ft. and in addition to the total consideration discussed above GST as applicable was also to be paid by the allottees. He has further claimed that he had fixed the price for selling of the units, before allotment, after considering the GST paid/payable on the goods & services involved in the execution of the project as well as the available ITC which would be set-off against the output tax liability. He has also contended that the construction activities on the above project had commenced on 14.01.2018 and subsequently during the post-GST regime. The Respondent has further contended that in the real estate sector, the anti-profiteering provision under Section 171 (1) of the CGST Act, 2017 read with Rule 122 to 137 of the CGST Rules, 2017 were applicable on the agreements which were executed before coming in to force of the GST and the transfer of property in goods and services was partly made in the pre-GST period and partly it was to be made in the post GST regime, so that the benefit of the additional ITC available to the developer which was not available or was part of the cost in the pre-GST period was passed on to the buyers. The Respondent has also cited the judgement passed by the Hon'ble Supreme Court of

India in the case of Larsen & Turbo Limited & others v. State of Karnataka & others [(2013) 65 VST 1(SC) =2014 1 SCC 708] in which it was held that "The activity of construction undertaken by the developer etc. would be work contract only from the stage he entered into a contract with the flat purchaser." The Respondent has also submitted that as the allotment of the flats was made on 20.11.2017 and the agreements between the Respondent and the buyers were executed on 13.12.2017 and the construction activities had commenced w.e.f. 14.01.2018, after obtaining environment clearances from the competent authority on 09.01.2018, all the above events had taken place during the post-GST period. The Respondent has further submitted that the transaction between the builder & the buyers was covered by clause (b) of paragraph 5 of Schedule II of the CGST Act, 2017 from the date the buyer was allotted the flat on 20.11.2017 or from the date of signing of the Builder-Buyer agreement on 13.12.2017 whichever was earlier. The Respondent while referring to the Notification No. 03/2019-Central Tax (Rate) dated 29.03.2019 which amended the Notification No. 11/2017- Central Tax (rate) dated 28.06.2017 on the recommendations of the GST Council given in its 33rd meeting held on 24.02.2019 and in the 34th meeting held on 19.03.2019 has claimed that the rates of GST on the residential projects had been revised due to which the GST @ 1% without ITC was to be charged for the affordable housing projects, GST @ 5% without ITC was leviable for the other residential properties other than affordable houses and GST @ 12% with ITC was to be charged on the commercial properties other than specified ones on which it would attract GST @ 5%.

13. The Respondent has also argued that the GST Council in its 34th meeting held on 19.03.2019, had reconsidered its earlier recommendation given in the 33rd meeting and given one time option to the developers of the ongoing projects to either opt for the new rate of tax mentioned above or to continue charging the existing old rate of GST due to the reason that the developers of the ongoing projects had already calibrated the ITC at the time of launching of the projects by considering ITC adjustable against their output tax liability and new tax rates of 1% or 5% without ITC would make it difficult for them to account for the differential rates applicable which would complicate completing of the projects. The Respondent has also stated that he had opted to continue with the old GST rate with entitlement to claim ITC and informed the authorities accordingly. He has further stated that there was no reduction in the GST rate on the ongoing projects and there was only an option either to opt for the old GST structure with eligibility to claim ITC or pay the GST at the fixed rates without the claim of ITC and therefore, the anti-profiteering provisions did not apply in his case. He has also annexed the newspaper cuttings, copy of the agreement executed with the Applicant No. 1, copy of environment clearance, copy of the judgement of the Hon'ble Supreme Court, copy of the proceedings of the 33rd and 34th meetings of the GST Council and the copy of the option exercised by him along with his submissions.

14. The Respondent vide his further submissions dated 22.05.2019 has stated that the Solera-2 project was exempt from Service Tax in the pre-GST regime and ITC on the input services was also not available as per the CENVAT Credit Rules, 2004, hence the Respondent had

not taken any ITC benefit on this project in the pre- GST regime and the first ITC was taken in the post-GST regime on 28.07.2017. He has also filed an affidavit for non availment of the ITC during the pre-GST period.

15. We have carefully considered the DGAP's Report and the written submissions filed by both the Applicant No. 1 and the Respondent which have been placed on record and find that the following issues are required to be settled in the present proceedings:-

I. Whether there was reduction in the rate of tax on the construction services as alleged by the Applicant No. 1 ?

II. Whether there was benefit of additional ITC available to the Respondent which was not passed on by him to the Applicant No. 1 ?

III. Whether there was any violation of the provisions of Section 171 (1) of the CGST Act, 2017 by the Respondent?

16. Perusal of the record reveals that the Respondent had got Affordable Housing Solera-2 project approved under the Haryana AHP and invited applications for allotment of houses vide advertisement given in the Times of India on 24.07.2017. The Applicant No. 1 had applied for allotment of a flat and paid the security deposit vide Cheque No. 004057 dated 11.08.2017 which was encashed on 18.08.2017. The draw of lots for allotment of houses was conducted on 16.11.2017 in the presence of the committee constituted under the above Policy and the Applicant No. 1 was allotted a flat on 20.11.2017. The Applicant No. 1 had himself admitted these facts in his letter dated 21.09.2018 addressed to the Respondent a copy of which has been placed on record as Annexure-7 by the DGAP. He had also withdrawn his complaint made against the denial of benefit of ITC to him vide this letter. It is also revealed that an agreement was executed

between the above Applicant and the Respondent on 13.12.2017 vide which the terms and conditions for allotment of Flat No. A-5/907 in Block/Tower A-5 having carpet area of 577.946 sq. ft. and balcony area of 82.57 sq. ft. were settled. Clause 4.1 of the agreement shows that the Applicant No. 1 was required to pay price of Rs. 4000/- per sq. ft. for the carpet area and Rs. 500/- per sq. ft. for the balcony area at the total sale consideration of Rs. 23,53,069/-. As per Explanation (v) given below Clause 4.1 of the agreement the Applicant No. 1 was required to pay GST in addition on the payments to be made by him on demand. Clause 4.7 of the agreement further makes it clear that the above Applicant would be liable to pay any tax imposed by the State or the Central Government in addition to the sale consideration. It is also apparent from the record that the Respondent had received the Environment Clearance from the State Environment Impact Assessment Authority Haryana on 09.01.2018 before which he could not have started the execution of the project. On the basis of the sequence of the above events it can be safely concluded that the above project had been started after coming in to force of the GST w.e.f. 01.07.2017. It is also clear that the above Applicant had deposited the security amount for allotment of the flat on 18.08.2017 and was given the allotment on 20.11.2017 on the basis of the draw of lots held on 16.11.2017. The agreement between the above Applicant and the Respondent was executed on 13.12.2017. Therefore, it is apparent that the Applicant No. 1 had applied for allotment and was allotted the above flat after coming in to force of the GST w.e.f. 01.07.2017. Since the above project was not under execution in the pre-GST period i.e. before 01.07.2017 therefore, no comparison can be made between the ITC which was available to the Respondent before 01.07.2017 and after 01.07.2017

to determine whether the Respondent had benefitted from additional availability of ITC or not. The Respondent through his sworn affidavit has also claimed that he had not availed benefit of ITC during the pre-GST period and he had availed the same on 28.07.2017 after coming in to force of the GST. From the above facts it is established that there has been no additional benefit of ITC to the Respondent and hence he was not required to pass on its benefit to the above Applicant by reducing the price of the flat. The Applicant No. 1 could have availed the above benefit only if the above project was under execution before coming in to force of the GST as the Respondent would have been eligible to avail ITC on the purchase of goods and services after 01.07.2017 on which he was not entitled to do so before the above date. Since there was no basis for comparison of ITC available before and after 01.07.2017, the Respondent was not required to recalibrate the price of the flat due to additional benefit of ITC. Hence, the allegations of the Applicant made in this behalf are incorrect and therefore, the same cannot be accepted.

17. The above Applicant has also claimed that the rate of tax had been reduced from 12% to 8% by the Central Government vide its Notification dated 21.01.2018 and as per the directive issued by the CBIC he should not have been charged GST on the amount which he had deposited. However, it is apparent from the record that the price of the above flat of Rs. 4000/- per sq. ft. was fixed under the above Policy after taking in to account the availability of ITC post-GST. Moreover, as per the terms and conditions of the agreement dated 13.12.2017, the Applicant had himself agreed to bear the burden of GST and therefore, he cannot resile from his commitment. Hence, the claim made by the above Applicant is untenable.

18. It is also established from the evidence placed on record that the Respondent has charged GST @ 12% from the Applicant No. 1 as per the Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 and subsequently levied it @ 8% w.e.f 25.01.2018 as per the Notification No. 1/2018-Central tax (Rate) dated 21.01.2018 and hence the rate of tax has been correctly charged by the Respondent. Since the project was not under execution in the pre-GST period, no comparison can be made between the pre and post GST rate of tax which could establish that there has been reduction in the rate of tax the benefit of which was required to be passed on to the above Applicant and hence the claim of the Applicant No. 1 made on this ground is unacceptable.

19. The Applicant No. 1 has also claimed that the Solera-1 and the Solera-2 projects were same and the Respondent was misleading by stating that they were separate projects. He has also produced copies of the Sanctioned Building Plans of both the projects to claim that these projects were started before 01.07.2017 due to which he was entitled to claim the benefit of ITC. However, perusal of the above plans submitted by the Respondent shows that the plan for the Solera-1 project had already been sanctioned whereas the FAR for the Solera-2 was only proposed in this plan and there is no evidence to show that both the projects were same. Moreover, the entitlement of the Applicant No. 1 to claim benefit of ITC would only arise if there was any additional benefit of ITC to the Respondent post-GST. Therefore, the contention of the above Applicant made on this ground is unreasonable and hence it cannot be accepted.

20. The Applicant No. 1 has also quoted the directive dated 07.02.2019 in his support. However, perusal of the same shows that it is only a press statement issued after the meeting of the GST Council held on 18.01.2018

and its impact will have to be considered on the basis of facts of each case. On the basis of the facts of the present case it is clear that there had been no additional benefit of ITC to the Respondent and hence he is not required to pass on its benefit. The above Applicant has also quoted the reply given on FAQ No. 16 by the CBIC in his support perusal of which shows that it pertains to the clarification given on the reduced rates of tax on the construction services which have come in to force w.e.f. 01.04.2019. Since, the Respondent has opted to continue with the old tax rate of 8% the above clarification does not apply in the present case and any claim made on this ground by the above Applicant is untenable.

21. The Applicant No. 1 has also contended that the Respondent had opted to charge GST @ 8% and hence he should pass on the benefit of ITC to him @ 8% and there was no logic in paying GST at the above rate when he could have paid it @ 1%. This claim of the above Applicant is unreasonable as the Respondent is entitled to opt for paying GST @ 8% and charge it from his customers accordingly. As per the terms of the agreement the above Applicant is bound to pay the GST in addition to the sale consideration and hence he cannot claim that he should be passed on the benefit of ITC @ 8%. The implication of ITC has already been considered by the Respondent while fixing price of the flat post-GST and hence no benefit of ITC is due to the above Applicant. Therefore, the contention of the Applicant No. 1 made on this ground is not justified.

22. Perusal of Section 171 (1) of the CGST Act, 2017 shows that it reads as under:-

"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."

It is clear from the above Section that there should either be reduction in the rate of tax or the benefit of ITC which is required to be passed on to the recipients by commensurate reduction in the price. Since there has been no reduction in the rate of tax or benefit of additional ITC to the Respondent the provisions of the above Section are not attracted in the present case and the allegation of profiteering is not established against the Respondent.

23. Based on the above facts it is established that the Respondent has not contravened the provisions of Section 171 (1) of the CGST Act, 2017 and we find no merit in the application filed by the above Applicants and the same is accordingly dismissed.

24. 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

Certified Copy

(Bhupinder Batar)
Assistant Commissioner, NAA

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

Sd/-
(R. Bhagyadevi)
Technical Member

Sd/-
(Amand Shah)
Technical Member