

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

Case No. 65/2019

Date of Institution 06.06.2018

Date of Order 03.12.2019

In the matter of:

1. Smt. Mamta Aggarwal, B-575, Sangam Vihar, New Delhi-110062.
2. Director General of Anti-Profiteering, Central Board of Indirect Taxes & Customs, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.

Applicants

Versus

1. M/s GLS Infratech Pvt Ltd, 311, 3rd Floor, JMD Pacific Square, Sector-15, Part-II, Gurgaon, Haryana-122001.

Respondent

Quorum:-

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



Present:-

- 1) None for Applicant No. 1.
- 2) Shri R. A. Rajneesh, Assistant Commissioner, for the Director General of Anti-Profiteering i.e. Applicant No. 2.
- 3) Sh. Narendera Kumar, C.A., Authorised Representative for Respondent.

ORDER

1. This Report dated 26.02.2019 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 an application dated 03.05.2018 was filed before the Haryana State Screening Committee on Anti- Profiteering which referred it to 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 "Arawali Homes" situated at Sector-4, Sohna, Gurgaon, Haryana. The above applicant had alleged that the Respondent was collecting wrong GST post implementation of GST and was not refunding GST collected in the wrong manner, even after sending clarification that the GST was not applicable to "Affordable Housing", as the GST amount could be adjusted against the Input Tax Credit (ITC).

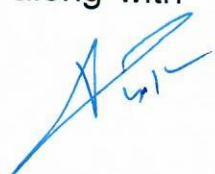


2. The above application was examined by the Standing Committee on Anti-profiteering in its meetings held on 07.08.2018 & 08.08.2018 and was forward to the DGAP for detailed investigation under Rule 129 (1) of the CGST Rules, 2017.
3. The DGAP on receipt of the above application had called upon the Respondent to submit reply as to the whether the ITC benefit was passed on to the recipients and also asked him to suo-moto determine the quantum of benefit which was not passed on. The Respondent as well as the above Applicant was afforded opportunity to inspect the evidence submitted by the other party however both of them did not avail the same. The Respondent had also not supplied the complete information sought by the DGAP hence summons were issued against him under Section 70 of the CGST Act, 2017 read with Rule 132 of the CGST Rules, 2017 and accordingly the Respondent had appeared on 30.11.2018 and submitted the required information.
4. The Respondent submitted replies vide letters dated 24.09.2018, 03.10.2018, 10.10.2018, 23.10.2018, 15.11.2018, 30.11.2018, 02.01.2018, 16.01.2019 and 06.02.2019 to the DGAP. Vide letter dated 03.10.2018 the Respondent had stated that he had informed the Applicant No. 1 over telephone and through e-mail about passing on of the benefit of ITC. He has also stated that a number of changes were taking place in the GST regime, such as, change in the GST rates and its applicability on Affordable Housing Projects, however, the Respondent had ensured that the benefit of actual ITC was passed on to all his customers and he has passed on benefit of ITC amounting to Rs. 2,52,63,079/-. The Respondent had further

undertaken that the final benefit of ITC would be recalculated at the time of handing over of the possession of the flats to the customers.

5. The DGAP's investigation Report has covered the period from 01.07.2017 to 31.08.2018. The Respondent has also submitted the following documents along with his replies:-

- (a) Copies of GSTR-1 Returns for the period from July, 2017 to August, 2018.
- (b) Copies of GSTR-3B Returns for the period July, 2017 to August, 2018.
- (c) Copies of VAT & ST-3 Returns for the period from April, 2016 to June, 2017.
- (d) Copies of all demand letters and sale agreement/contract issued in the name of the above Applicant.
- (e) Tax rates- pre-GST and post-GST.
- (f) Copy of Balance Sheet for FY 2016-17& FY 2017-18.
- (g) Copy of Electronic Credit Ledger for the period from 01.07.2017 to 31.08.2018.
- (h) CENVAT/ITC register for the period from April, 2016 to August, 2018.
- (i) Details of VAT, Service Tax, ITC of VAT, CENVAT for the period from April, 2016 to June, 2017, and GST & ITC of GST for the period from July, 2017 to August, 2018 for the project "Arawali Homes".
- (j) List of home buyers of the project "Arawali Homes" along with the details of GST benefit passed on.



- (k) Reconciliation of turnover reported in GSTR-3B Return with list of home buyers.
- (l) Copy of e-mail correspondence with the above Applicant.
- (m) Sample Copies of letters issued to the customers regarding passing on the GST ITC benefit.

6. DGAP has also submitted that the details of the amounts and the GST paid by the Applicant No. 1 for a flat measuring 467 sq. ft., at the basic sale price of Rs. 3,600/- per sq. ft. as per the Table-'A' below:-


Table-'A'

(Amount in Rs.)

S. No.	Payment Stage	Due Date	Basic %	BSP	GST	Total
1	At the time of submission of the Application	07.10.2016	5.00%	86,560	-	86,560
2	Within fifteen days of the date of issuance of Allotment	18.10.2016	20.00%	3,46,240	-	3,46,240
3	Within six months from the date of issuance of Allotment letter	03.04.2017	12.50%	2,16,400	-	2,16,400
4	Within 12 months from the date of issuance of Allotment letter	15.09.2017	12.50%	216,400	25,968	242,368
5	Within 18 months from the date of issuance of Allotment letter	15.03.2018	12.50%	216,400	17,312	233,712
6	Within 24 months from the date of issuance of Allotment letter	Not yet due as on 31.08.2018	12.50%	216,400	17,312	233,712
7	Within 30 months		12.50%	216,400	17,312	233,712
8	Within 36 months from the date of issuance of Allotment letter		12.50%	216,400	17,312	233,712
Total			100.00%	17,31,200	1,12,528	18,43,728

7. The DGAP has also observed that the Respondent may have informed the above Applicant regarding passing on the benefit of ITC at the time of handing over the possession of the flat but the

profiteering, if any, has to be determined at a given point of time, in terms of Rule 129 (6) of the above Rules and such determination cannot be deferred till the completion of the project. Therefore, the ITC available to the Respondent and the taxable amount received by him from the above Applicant and the other recipients post implementation of GST, has to be taken into account for determining the benefit of ITC required to be passed on by the Respondent to the Applicant No. 1 and the other recipients. He has further noted that para 5 of Schedule-III of the Central Goods and Services Tax Act, 2017 (Activities or Transactions which shall be treated neither as a supply of goods nor a supply of services) reads as "*Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building*". Further, clause (b) of Paragraph 5 of Schedule II of the Central Goods and Services Tax Act, 2017 reads as "*(b) construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier*". Thus, the DGAP has claimed that the ITC pertaining to the residential units which were under construction but not sold was provisional ITC which may be required to be reversed by the Respondent, if such units remained unsold at the time of issue of the Completion Certificate (CC), in terms of Section 17 (2) & Section 17 (3) of the Central Goods and Services Tax Act, 2017 which read as under:-



Section 17 (2) "Where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies".

Section 17 (3) "The value of exempt supply under sub-section (2) shall be such as may be prescribed, and shall include supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building".

Therefore, the DGAP has further 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 them post-GST.

8. The DGAP has also submitted that the Respondent has claimed in his letter dated 03.10.2018 that the Applicant No. 1 had been informed on 30.03.2018 that the benefit of ITC accruing to him if any, on account of introduction of GST, would be passed on to her. He has further submitted that copy of the letter issued to other customers, furnished by Respondent as a part of the letter dated 16.11.2018, showed that the Respondent had passed on an amount of Rs. 27,556/- (including 8% GST on the base amount of Rs. 25,516/-) to the above Applicant which worked out to Rs. 45 per sq.

ft. {Rs. 25,516/- [467 (carpet area) +100 (balcony area)]}. However, he has argued that the correctness of the amount of benefit so passed on by the Respondent was required to be determined in terms of Rule 129 (6) of the above Rules. Therefore, the ITC available to the Respondent and his turnover (consideration received from the Applicant and other recipients) post implementation of GST has to be taken into account for determining the benefit of ITC that was required to be passed on.

9. The DGAP has also contended that the service of construction of Affordable Housing, provided by the Respondent, was exempt from Service Tax vide Notification No. 25/2012-ST dated 20.06.2012 as amended by Notification No. 9/2016-ST dated 01.03.2016, according to which the Respondent was not eligible to avail credit of Central Excise Duty paid on inputs or Service Tax paid on the input services. However, the Respondent was eligible to avail the credit of VAT paid on the purchase of inputs. The DGAP has further contended that post-GST, the Respondent could avail the ITC of GST paid on all the inputs and input services including the sub-contracts. From the information submitted by the Respondent for the period from April, 2016 to August, 2018, the details of ITC availed by him and his turnover from the project "Arawali Homes" during the pre-GST (April, 2016 to June, 2017) and post-GST (July, 2017 to August, 2018) periods the ratios of CENVAT/ITC to turnover are furnished by the DGAP in Table-'B' below:-



Table-'B'

(Amount in Rs.)

S. No.	Particulars	April, 2016 to March, 2017	April, 2017 to June, 2017	Total (Pre-GST)	Taxable Turnover @ 12% GST(01.07.2017 to 24.01.2018)	Taxable Turnover @ 8% GST(25.01.2018 to 31.08.2018)	Total (Post-GST)
1	CENVAT of Service Tax Paid on Input Services used (A)	-	-	-	-	-	-
2	Credit of VAT Paid on Purchase of Inputs (B)	39,08,470	27,91,128	66,99,598	-	-	-
3	ITC of GST Availed (C)	-	-	-	4,71,27,341	3,07,85,179	7,79,12,520
4	Total CENVAT/ITC Availed (D)= (A)+(B) or (C)	39,08,470	27,91,128	66,99,598	4,71,27,341	3,07,85,179	7,79,12,520
5	Total Turnover (E)	8,66,49,224	5,94,58,484	14,61,07,708	18,78,94,100	29,21,96,500	48,00,90,600
6	Total Saleable Carpet Area (Excluding Balcony Area) (F)			7,69,488			7,69,488
7	Total Sold Carpet Area (Excluding Balcony Area) (in SQF) relevant to turnover (G)			4,06,083			5,07,416
8	Relevant ITC [(H)= (D)*(G)/(F)]			35,35,588			5,13,77,097
	Ratio of ITC to Turnover [(I)=(H)/(E)]			2.42%			10.70%

The DGAP from Table-'B' has stated that it was clear that the ITC as a percentage of the turnover that was available to the Respondent during the pre-GST period from April, 2016 to June, 2017 was 2.42% and during the post-GST period from July, 2017 to August, 2018, it was 10.70% which clearly established that post-GST, the Respondent has benefited from additional ITC to the tune of 8.28% [10.70% (-) 2.42%] of the taxable turnover.

10. The DGAP has also stated that the Central Government, on the recommendation of the GST Council, had levied 18% GST with effective rate of 12% in view of 1/3rd abatement on value, on construction service vide Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017. The effective GST rate on construction service in

respect of the affordable and low-cost houses upto a carpet area of 60 square metres was further reduced from 12% to 8%, vide Notification No. 1/2018-Central Tax (Rate) dated 25.01.2018. The DGAP has further stated that in view of the change in the GST rate after 01.07.2017, the issue of profiteering has been examined by him in two parts by comparing the applicable tax rate and the ITC available for the pre-GST period from April, 2016 to June, 2017 when only VAT@ 5.25% was payable with (1) the post-GST period from July, 2017 to 24.01.2018 when the effective GST rate was 12% and (2) with the GST period from 25.01.2018 to 31.08.2018 when the effective GST rate was 8%. Accordingly, on the basis of the figures contained in Table-'B' above, the DGAP has tabulated the comparative figures of ITC availed/available during pre-GST period and post-GST period in the Table-'C' below:-

Table-'C'

(Amount in Rs.)

S. No.	Particulars		Post- GST		
1	Period	A	01.07.2017 to 24.01.2018	25.01.2018 to 31.08.2018	Total
2	Output tax rate (%)	B	12	8	
3	Ratio of CENVAT/ ITC to Turnover as per Table - B above (%)	C	10.70	10.70	10.70
4	Increase in ITC availed post-GST (%)	D= 10.70% less 2.42%	8.28	8.28	8.28
5	Base demand raised during July, 2017 to August, 2018 (Rs.)	E	18,78,94,100	29,21,96,500	48,00,90,600
6	GST raised over Base Price (Rs.)	F= E*12% or 8%	2,25,47,292	2,33,75,720	4,59,23,012
7	Total Demand raised	G=E+F	21,04,41,392	31,55,72,220	52,60,13,612
8	Recalibrated Base Price	H= E*(1-D)	17,23,36,469	26,80,02,630	44,03,39,098
9	GST @12% or 8%	I= H*12% or 8%	2,06,80,376	2,14,40,210	4,21,20,587
10	Commensurate demand price	J= H+I	19,30,16,845	28,94,42,840	48,24,59,685
11	Excess Collection of Demand or Profiteering Amount	K= G-J	1,74,24,547	2,61,29,380	4,35,53,927

The DGAP has claimed from Table-‘C’ above, that the additional ITC of 8.28% of the taxable turnover should have resulted in commensurate reduction in the base price as well as cum-tax price of the flats sold by the Respondent. Therefore, in terms of Section 171 of the Central Goods and Services Tax Act, 2017, the benefit of the additional ITC was required to be passed on to the recipients. The DGAP has also submitted that the Respondent has not contested that benefit of ITC would eventually have to be passed on to the recipients and the Respondent has claimed that he has passed on an amount of Rs. 27,556/- to the Applicant No. 1 which has been duly verified by the DGAP from the Applicant No. 1’s ledger account submitted by the Respondent.

11. The DGAP has also stated that on the basis of the aforesaid CENVAT/ITC availability pre and post-GST and the details of the amount collected by the Respondent from the Applicant and the other home buyers during the period from 01.07.2017 to 24.01.2018, the profiteered amount came to Rs. 1,74,24,547/- which includes 12% GST on the base profiteered amount of Rs. 1,55,57,631/- and the profiteered amount during the period from 25.01.2018 to 31.08.2018, came to Rs. 2,61,29,380/- which includes 8% GST on the base profiteered amount of Rs. 2,41,93,870/-. Therefore, the total profiteered amount during the period from 01.07.2017 to 31.08.2018 came to **Rs. 4,35,53,927/-** which includes GST @ 12% or 8% on the base profiteered amount of Rs. 3,97,51,502/-. The home buyer and Unit No. wise break-up of this amount has been given in **Annex-20** of the Report dated 26.02.2019 furnished by the DGAP. This amount is

inclusive of Rs. 39,419/- including GST on the base amount of Rs. 35,836/- which is the profiteered amount in respect of the Applicant No. 1. The DGAP has also intimated that the service was supplied in the State of Haryana only.

12. The DGAP has also contended that the Respondent has passed on the benefit of ITC post implementation of GST to the extent of Rs. 2,52,63,079/- including 8% GST on the base amount of Rs. 2,33,91,740/-) to the 1075 flat buyers. A summary of category-wise profiteering & the benefit passed on has been given in Table-'D' below by the DGAP:-

Table-'D'

(Amount in Rs.)

S. No.	Category of Customers	No. of Units	Area (in Sq. ft.)	Amount Received Post-GST	Profiteering Amt. as per Annex-20 of the Report	Benefit Passed On by Respondent	Difference	Remark
A	B	C	D	E	F	G	H=F-G	I
1	Applicant	1	467	4,32,800	39,419	27,556	11,863	Further Benefit to be pass on as per Annex-21
2	Other Buyers	1,074	5,06,949	47,96,57,800	4,35,14,508	2,52,35,523	1,82,78,985	Further Benefit to be passed on as per Annex-21
3	Other Buyers	557	2,62,072	-	-	-	-	Unsold Units
	Total Residential (A)	1,632	7,69,488	48,00,90,600	4,35,53,927	2,52,63,079	1,82,90,848	

The DGAP has also contended that the Respondent has passed on lesser benefit than what he should have passed in respect of 1075 flats mentioned at Sr. No. 1 & 2 of the above Table amounting to Rs. 1,82,90,848/- as per the details furnished in Annexure-21.

13. The DGAP has also submitted that the benefit of additional ITC to the tune of 8.28% of the turnover has, in fact, accrued to the Respondent and the same was required to be passed on to the Applicant No. 1 and the other recipients, thus, the Respondent has contravened the provisions of Section 171 of the Central Goods and Services Tax Act, 2017 in as much as the additional benefit of ITC @ 8.28% of the base price received by the Respondent during the period from 01.07.2017 to 31.08.2018 has not been passed on. The Respondent has further submitted that the Respondent has realized an excess amount of Rs. 39,419/- from the Applicant No. 1 which includes both the profiteered amount @ 8.28% of the base price and GST on the said profiteered amount. He has also claimed that the Respondent has passed on benefit of Rs. 27,556/- to the Applicant No. 1 which has been duly verified by him and therefore, the Respondent has in fact profiteered by an amount of Rs. 11,863/- [39,419/- (-) 27,556/-] in respect of the above Applicant. The DGAP has further claimed that the Respondent has also realized an additional amount of Rs. 4,35,14,508/- which includes both the profiteered amount @ 8.28% of the base price and GST on the said profiteered amount, from other recipients as well who were not Applicants in the present proceedings. These recipients were identifiable as per the documents provided by the Respondent, giving the names and addresses along with the Unit No. allotted to each recipient. The DGAP has also stated that the Respondent has passed on Rs. 2,52,35,523/- as benefit of ITC to his customers and therefore, the Respondent has profiteered by an amount of Rs. 1,82,78,985/- [4,35,14,508/- (-) 2,52,35,523/-] and this additional amount of Rs.

1,82,78,985/- was required to be returned to these eligible recipients.

The DGAP has further stated that the present investigation covered the period from 01.07.2017 to 31.08.2018 and hence, profiteering, if any, for the period post August, 2018, has not been computed as the exact quantum of ITC that will be available to the Respondent in future could not be determined at this stage, when the construction of the project was yet to be completed.

14. The above Report was considered by the Authority in its meeting held on 05.03.2019 and it was decided to hear the Applicants and the Respondent on 25.03.2019. Notice dated 06.03.2019 was also issued to the Respondent to explain why the Report furnished by the DGAP should not be accepted and his liability for having violated the provisions of Section 171 of the CGST Act, 2017 should not be fixed. He was further asked to show cause why penalty as per the provisions of Section 29, 122-127 of the CGST Act, 2017 read with Rule 21 and 133 of the CGST Rules, 2017 should not be imposed on him. The hearing fixed on 25.03.2019 was postponed to 09.04.2019 on the request of the Respondent. On 09.04.2019 the Applicant No. 1 did not appear, the DGAP was represented by Shri R. A. Rajneesh, Assistant Commissioner while Mr. Narender Kumar, Authorised Representative appeared on behalf of the Respondent. Further hearings were scheduled on 29.04.2019, 17.05.2019 (adjourned), 27.05.2019 and 12.06.2019.
15. The Respondent has filed submissions dated 09.04.2019, 29.04.2019, 27.05.2019, 12.06.2019 and 06.06.2019 which may be summed up as follows:-



- I. That the respondent was engaged in the real estate business and was developing an affordable residential complex in Gurugram (Haryana) and he was executing only one such project "Arawali Homes" in Sector 4, Sohna, Gurugram (Haryana).
- II. That the Ministry of Finance, Government of India has issued Notification No. 03/2019-Central Tax (Rate) dated 29.09.2019 (29.03.2019) and he was trying to analyze the effect of this Notification on the ITC available to him.
- III. That in the present affordable residential project, various provisions of the indirect tax laws were applicable viz. the Haryana VAT Act, 2003, Service Tax Law, Central Excise Act, Central Goods and Services Tax Act, 2017 and the Central Goods and Services Tax Rules, 2017.
- IV. That the DGAP has not considered provisions of Section 171 of the Central Goods and Service Tax Act, 2017 properly in his investigation Report.
- V. That as per Section 171 of the CGST, 2017 if there was any additional benefit of ITC available under the GST regime which was not available earlier then that benefit has to be passed on to the customers by way of reduction in prices.
- VI. That under the pre-CGST regime vide Notification No. 09/2016 dated 01.03.2016 the Service Tax was exempted in the case of construction of residential complex under the affordable housing schemes and accordingly the CENVAT credit for input services was not available to him. In the case of Haryana VAT Act, 2003, as the Respondent had opted for the regular scheme

to discharge his VAT liabilities on transfer of goods during the execution of the construction activities therefore, the VAT input credit was allowed to him.


- VII. That only the credit of Central Excise Duty on materials was not allowed to him and was cost to him in the erstwhile regime.
- VIII. That only this component of Central Excise Duty was the additional ITC available to him in the GST regime which he was ready to pass on to his customers subject to adjustment of any ITC which would be cost to him at the time of completion of the project.
- IX. That the Respondent has also provided the break-up of total ITC of Rs. 7,79,12,520/- available to him in the post-GST regime for the period from July, 2017 to August, 2018 vide Annexure-1 of his submissions dated 27.05.2019.
- X. That the Respondent has passed ITC benefit of Rs. 2,52,63,684/- to his 1054 customers through the credit notes details of which have been attached by him as Annexure-2 of his above submissions. He has also supplied updated list of flats sold up to 31.03.2019 vide Annexure-3, details of total ITC availed upto 01.04.2019 vide Annexure-4 and details of the demand raised upto 31.03.2019 vide Annexure-5.
- XI. That he has passed on the GST Benefit on 14.11.2018 to his customer through credit notes on provisional basis and also informed them that the final GST benefit shall be recalculated / reassessed at the time of handing over of the project.
- XII. That vide his submissions dated 06.06.2019 the Respondent has informed that he has decided to accept the Report of the

DGAP and based on the above Report he would pay the balance amount of GST Benefit to the customers.

16. The submissions dated 29.04.2019 and 27.05.2019 filed by the Respondent were sent to the DGAP who vide his supplementary Report dated 04.06.2019 received on 06.06.2019 has submitted that the objections of the Respondent related to the interpretation of the provisions of Section 171 of CGST, 2017 which may be decided by the Authority.

17. We have carefully considered the Report of the DGAP, submissions made by the Respondent and based on the record it is revealed that the Respondent is executing an affordable Housing Scheme approved by the Government of Haryana under the name and style of "Arawali Homes" in which he has sold 1560 flats till 31.03.2019. On examining the various submissions we find that the following issues need to be addressed:-

- a. Whether there was reduction in the rate of tax on the construction service provided by the Respondent w.e.f. 01.07.2017?
- b. Whether there was any net additional benefit of ITC which has accrued to the Respondent which was required to be passed on by him to his recipients?
- c. Whether there was any violation of the provisions of Section 171 of the CGST Act, 2017, by not passing on the above benefits by the Respondent?



18. Perusal of the Report dated 26.02.2019 furnished by the DGAP shows that after taking into account the benefit of credit available during the pre-GST period from April, 2016 to June, 2017 to the taxable turnover received during the above period the ratio of ITC to turnover has been computed by the DGAP as 2.42% of the turnover as per Table-B supra. Similarly, the above ratio has been calculated as 10.70% for the post-GST period from 01.07.2017 to 31.08.2018. Accordingly, the DGAP has claimed that the Respondent has benefited to the tune of 8.28% of the turnover which he is required to pass on to his buyers. The above ratios of ITC to turnover have been arrived at by the DGAP on the basis of the information supplied by the Respondent which has been duly verified by the DGAP and hence the above ratios can be relied upon. The Respondent has not disputed the above ratios and has instead agreed to pass on the benefit of ITC which has been calculated on the basis of the above Ratios vide his submissions dated 06.06.2019.

19. Based on the above facts this Authority determines the profiteered amount as Rs. 4,35,53,927/- (inclusive of applicable GST @ 12% or 8%) for the 1075 residential units for the period from 01.07.2017 to 31.08.2018 as per the details furnished by the DGAP vide Annexure-20 of his above Report. The above amount includes an amount of Rs. 1,74,24,547/- including the GST @ 12% w.e.f. 01.07.2017 to 24.01.2018 and an amount of Rs. 2,61,29,380/- including the GST @ 8% for the period from 25.01.2018 to 31.08.2018. However, the Respondent has passed on Rs. 2,52,63,079/- as benefit of ITC to the above flat buyers as has been duly verified by the DGAP in Table-D supra. Therefore, the

balance profiteered amount of Rs. 1,82,90,848/- [4,35,53,927/- (-) 2,52,63,079/-] is required to be returned to the eligible recipients as per the details furnished by the DGAP vide Annexure-21 of the above Report. This amount includes Rs. 11,863/- (39,419/- (-) Rs. 27,556/- (inclusive of applicable GST) of the benefit which is required to be passed on to the Applicant No. 1.

20. It is also established from the perusal of the above facts of the case that the provisions of Section 171 of the CGST Act, 2017 have been contravened by the Respondents as he has failed to pass on the benefit of additional ITC to his customers. Accordingly, he is directed to pass on an amount of Rs 11,863/- to the above applicant and an amount of Rs. 1,82,78,985/- (Rs. 1,82,90,848 - Rs. 11,863/-) to the other flat buyers who are not Applicants in the present proceedings as per the details given by the DGAP in Annexure-21. The above amounts shall be paid within a period of 3 months from the date of issue of this Order to the Applicant No. 1 and the other eligible house buyers by the Respondent along with interest @ 18% from the date from which these amounts were realised by the Respondent from them, till they are paid as per the provisions of Rule 133 (3) (b) of the CGST Rules, 2017, failing which the above amounts shall be recovered by the concerned Commissioner CGST / SGST and paid to the eligible house buyers.

21. From the above discussions it is clear that the Respondent has profiteered by an amount of Rs. 4,35,53,927/- during the period of investigation. Therefore, this Authority under Rule 133 (3) (a) of the CGST Rules, 2017 orders that the Respondent shall reduce the

prices to be realized from the buyers of the flats commensurate with the benefit of ITC received by him as has been detailed above. The present investigation is only up to 30.08.2018 therefore, any additional benefit of ITC which shall accrue subsequently shall also be passed on to the buyers by the Respondent. In case this additional benefit is not passed on to the Applicant No. 1 or other buyers they shall be at liberty to approach the State Screening Committee Haryana for initiating fresh proceedings under Section 171 of the above Act against the Respondent. The concerned CGST or SGST Commissioner shall take necessary action to ensure that the benefit of additional ITC is passed on to the eligible house buyers in future.

22. It is evident from the above that the Respondent has denied the benefit of ITC to the buyers of the flats being constructed by him in contravention of the provisions of Section 171 (1) of the CGST Act, 2017 and has thus profiteered as per the explanation attached to Section 171 of the above Act. Therefore, he is liable for imposition of penalty under Section 171 (3A) of the CGST Act, 2017. Therefore, a Show Cause Notice be issued to him directing him to explain why the penalty prescribed under the above sub-Section should not be imposed on him. Accordingly, the notice dated 06.03.2019 vide which it was proposed to impose penalty on the Respondent under Section 29 and 122-127 of the above Act read with Rule 21 and 133 of the CGST Rules, 2017 is hereby withdrawn to that extent.

23. Further the Authority as per Rule 136 of the CGST Rules 2017 directs the Commissioners of CGST/SGST Haryana to monitor 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 all the buyers as per Annexure-20 of the Report. A report in compliance of this order shall be submitted to this Authority by the concerned Commissioners within a period of 4 months from the date of receipt of this order.


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

Sd/-
(B. N. Sharma)
Chairman

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

Sd/-
(Amand Shah)
Member(Technical)

Certified Copy


(A. K. Goel)
NAA, Secretary

F. No. 22011/NAA/07/GLS/2019 /6740-47 dated 04.12.2019
Copy To:-

1. M/s GLS Infratech Pvt Ltd, 311, 3rd Floor, JMD Pacific Square Sector-15, Part-II, Gurgaon, Haryana-122001.
2. Smt. Mamta Aggarwal, B-575, Sangam Vihar, New Delhi-110062.
3. Director General Anti-Profitteering, Central Board of Indirect Taxes & Customs, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.
4. The Commissioner of State Tax, Vanijya Bhavan, Plot No. 1-3, Sector-5, Panchkula, Haryana- 134151,
5. The Commissioner, CGST Gurugram, Plot no. 36 & 37, Sector-32, Gurugram, Haryana-122001,
6. Principal Secretary to Govt. of Haryana, Town & Country Planning Department, Plot No. 3, Sec-18A, Madhya Marg, Chandigarh-160018,
7. Director General Anti-Profitteering, Central Board of Indirect Taxes & Customs, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.
8. Guard File/Website.

