

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

Case No. 76/2019
Date of Institution 20.06.2019
Date of Order 18.12.2019

In the matter of:

1. Sh. Amit Tandon, Flat No. F-7, Bandhu Vihar Apartments, Plot No. 11, Sector-10, Dwarka, New Delhi-110075.
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 Adani M2K Projects LLP, Plot No. 83, Sector-32, Gurugram-122001.

Respondent



Quorum:-

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

Present:-

1. Sh. Amit Tandon, the Applicant No. 1 in person.
2. None for the Applicant No. 2.
3. Sh. Vishal Aggarwal, Advocate, Ms. Tuhina, Advocate, and Sh. Naveen K. Mittal, Employee Adani Group, Authorised Representatives for the Respondent.

ORDER

1. The present Report dated 19.06.2019, received on 20.06.2019 has been furnished by 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 a complaint dated 30.08.2018 was filed before the Haryana State Screening Committee on Anti-Profiteering by the Applicant No. 1 alleging profiteering by the Respondent in respect of purchase of Flat No. B-501 in the Respondent's project "Oyster Grande" situated in Sector-102/102A, Gurugram, Haryana. The Applicant No. 1 had alleged that the Respondent had not passed on the benefit of Input Tax Credit (ITC) to him by way of commensurate reduction in the price. This Complaint was examined by the Haryana State Screening Committee and it was observed that due to



availability of ITC on input materials, the Respondent's tax burden had been reduced which needed to be passed on to the customers, in terms of Section 171 of the CGST Act, 2017. The State Screening Committee forwarded the said application with its recommendation to the Standing Committee on Anti-profiteering for further action, in terms of Rule 128 of the CGST Rules, 2017.

2. The above Complaint was examined by the Standing Committee on Anti-profiteering in its meeting held on 13.12.2018 and vide its minutes was forward to the DGAP for detailed investigation under Rule 129 (1) of the CGST Rules, 2017.
3. The DGAP in his report has stated that the Applicant had submitted the following documents along with his application:
 - (a) Copies of demand letters issued to him, both pre-GST and post-GST.
 - (b) Copies of the communication with the Respondent regarding benefit of input tax credit.

On further perusal of the said application, it was revealed that the Applicant had booked a flat in the Respondent's project "Oyster Grande" vide application dated 21.06.2016, in the pre-GST era.

4. The DGAP on receipt of the said reference from the Standing Committee on Anti-profiteering, issued a notice under Rule 129(3) of above Rules on 14.01.2019, calling upon the Respondent to reply as to 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 and if so, to suo-moto determine the quantum thereof and indicate the same in his reply to the notice as well as furnish all supporting

documents. Vide the above mentioned notice, the Respondent was also given an opportunity to inspect the non-confidential evidences/information submitted by the Applicant No. 1 on 24.01.2019 or 25.01.2019, which the authorized signatory of the Respondent availed of on 24.01.2019. The Applicant No. 1 vide e-mail dated 07.06.2019 was also given an opportunity to inspect the non-confidential documents/reply furnished by the Respondent on 13.06.2019 or 14.06.2019, which was not availed of by him.

5. The DGAP has further stated that the period covered by the current investigation is from 01.07.2017 to 31.12.2018 and the Authority, vide Order No. F. No. 22011/NAA/19/2018/2205 dated 19.03.2019, had extended the time limit to complete the investigation upto 06.07.2019, in terms of Rules 129(6) of the CGST Rules.
6. The DGAP has also mentioned that the Respondent, in response to the notice dated 14.01.2019, had submitted his reply vide letters/e-mails dated 29.01.2019, 31.01.2019, 08.02.2019, 14.03.2019 and 06.06.2019. The Respondent has also submitted the details of the payment plan agreed upon with the Applicant No. 1 at the time of signing of the agreement in respect of flat no. B-501, which are furnished in Table-'A' below:-

Table-A

S No	Particulars	Percentage of Installment	Amount (in Rs.)
1	At the time of Booking	10% of BSP	13,77,186
2	Within 90 days of Booking	15% of BSP	20,65,779
3	Within 120 days of Booking	12.5% of BSP + 50% of EDC & IDC	21,17,360
4	Within 180 days of Booking	12.5% of BSP + 50% of EDC & IDC	21,17,360
5	On Offer of Possession	50% of BSP + PLC + Car Parking + IFMS + CMRC + Power Backup Charges	86,01,729
All Other Charges & Taxes (As Applicable)			
Total			1,62,79,414

7. The DGAP has further stated that vide the aforementioned letters/e-mails, the Respondent submitted the following documents/information :

- (a) Copies of GSTR-1 Returns for the period July, 2017 to December, 2018.
- (b) Copies of GSTR-3B Returns for the period July, 2017 to December, 2018.
- (c) Copy of Electronic Credit Ledger for the period 01.07.2017 to 31.12.2018.
- (d) Copies of Tran-1 for the period July, 2017 to December, 2017.
- (e) Copies of VAT & ST-3 Returns for the period April, 2016 to June, 2017.
- (f) Copies of all demand letters, sale agreement/contract issued in the name of the Applicant No. 1.
- (g) CENVAT/ITC register for the period April, 2016 to December, 2018.
- (h) Copy of Balance Sheets for FY 2016-17 & 2017-18.
- (i) Tax rates, pre-GST and post-GST.
- (j) Details of turnover, output tax liability/GST payable and ITC availed and its reconciliation with the turnover as per the list of home-buyers.

In terms of Rule 130 of the CGST Rules, 2017, the Respondent also submitted that except the copies of demand letters and the sale agreement/contract issued to the Applicant No. 1, all other details/information furnished by him were to be treated as confidential.

8. The DGAP has also stated that the subject application, the various replies of the Respondent and the documents/evidences on record had been carefully examined. The main issues for determination were whether there was reduction in rate of tax or benefit of ITC on the supply of construction service by the Respondent after implementation of GST w.e.f. 01.07.2017 and if so, whether the Respondent has passed on such benefit to the recipients, in terms of Section 171 of the CGST Act, 2017.
9. The DGAP has further stated that another aspect to be borne in mind while determining profiteering was 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 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, 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 ITC pertaining to the unsold units was outside the scope of the investigation and the Respondent was required to recalibrate the selling price of such units to be sold to the prospective buyers by considering the proportionate additional ITC available to them post-GST.

10. The DGAP also claimed that prior to 01.07.2017, i.e. before GST implementation, the Respondent was eligible to avail CENVAT credit of Service Tax paid on the input services. However, CENVAT credit of Central Excise Duty paid on the inputs was not admissible as per the CENVAT Credit Rules, 2004, which were in force at the material time. Moreover, since the Respondent was paying VAT @1% under

Haryana VAT Composition Scheme, he was not eligible to avail ITC of VAT paid on the inputs. Further, post-GST, the Respondent could avail the ITC of GST paid on all the inputs and input services including the sub-contracts. As per the information submitted by the Respondent for the period April, 2016 to December, 2018, the details of the ITC availed by him, his turnover from the project "Oyster Grande", the ratio of ITC to the turnover, during the pre-GST period (April, 2016 to June, 2017) and post-GST period (July, 2017 to December, 2018) periods, are furnished in Table-'B' below:-

Table-B

(Amount in Rs.)

S. No.	Particulars	(Pre-GST) April, 2016 to June, 2017	(Post-GST) July, 2017 to December, 2018
1	Credit of Service Tax Paid on Input Services (A)	64,274,080	-
2	Input Tax Credit of VAT Paid on Inputs (B)	-	-
3	Total CENVAT/VAT/Input Tax Credit Available (C)= (A+B)	64,274,080	-
4	Input Tax Credit of GST Availed (D)	-	118,469,757
5	Total Turnover from Residential and Commercial Area (E)	407,326,103	741,104,272
6	Total Saleable Residential Area in sq. ft. (F)	1,850,907	1,850,907
7	Total Saleable Commercial Area in sq. ft. (G)	3,571	3,571
8	Total Saleable Area in sq. ft. (H=F+G)	1,854,478	1,854,478
9	Sold Area Relevant to Turnover in sq. ft. (I)	654,145	821,336
10	ITC proportionate to Sold Area (J)	22,671,915	52,469,469
11	Ratio of CENVAT/ VAT/Input Tax Credit to Turnover (K=J/E)	5.57%	7.08%

The DGAP has further stated that from the Table-B above, the ITC as a percentage of the turnover that was available to the Respondent during the pre-GST period (April, 2016 to June, 2017) was 5.57% and during the post-GST period (July, 2017 to December, 2018), it was 7.08%. This clearly confirmed that post-

GST, the Respondent had been benefited from additional ITC to the tune of 1.51% [7.08% (-) 5.57%] of the turnover.

11. The DGAP has also mentioned that the Central Government, on the recommendation of the GST Council, had levied 18% GST on construction service (after one third abatement towards value of land, effective GST rate was 12% on the gross value), vide Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017. Accordingly, the profiteering had been examined by comparing the applicable tax rate and ITC available to the Respondent during the pre-GST period (April, 2016 to June, 2017) when Service Tax @ 4.5% and VAT@ 1% were leviable (total tax rate was 5.5% on the basic price) with the post-GST period (July, 2017 to December, 2018) when the effective GST rate was 12% on the gross value. On the basis of the figures contained in Table-'B' above, the comparative figures of ITC availed/available as a percentage of the turnover in the pre-GST and post-GST periods and the recalibrated basic price as well as the excess collection (profiteering) during the post-GST period, have been tabulated in Table-'C' below:-

Table-C

(Amount in Rs.)

S. No.	Particulars		Pre-GST	Post- GST
1	Period	A	April, 2016 to June, 2017	July, 2017 to Dec, 2018
2	Output tax rate (%)	B	5.50%	12.00%
3	Ratio of CENVAT/VAT/GST Input Tax Credit to Total Turnover as per Table - B above (%)	C	5.57%	7.08%
4	Increase in input tax credit availed post-GST (%)	D	-	1.51%
5	<u>Analysis of Increase in input tax credit:</u>			
6	Total Basic Demand during July, 2017 to December, 2018	E		741,104,272
7	GST @12%	F= E*12%		88,932,513
8	Total demand	G= E+F		

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				830,036,785
9	Recalibrated Basic Price	$H=E*(1-D)$ or 98.49% of E		729,913,597
10	GST @12%	$I=H*12\%$		87,589,632
11	Commensurate demand price	$J=H + I$		817,503,229
12	Excess Collection of Demand or Profiteered Amount	$K=G - J$		12,533,555

12. The DGAP has further stated that as per the Table-C, it was clear that the additional ITC of 1.51% of the turnover should have resulted in commensurate reduction in the basic price as well as cum-tax rate. Therefore, in terms of Section 171 of the CGST Act, 2017, the benefit of the additional ITC was required to be passed on by the Respondent to the recipients. In other words, by not reducing the pre-GST basic price by 1.51% on account of additional benefit of ITC and charging GST @12% on the pre-GST basic price, the Respondent appeared to have contravened the provisions of Section 171 of the of the CGST Act, 2017.

13. The DGAP has also claimed that having established the fact of profiteering, the next step was to quantify the same. On the basis of the aforesaid CENVAT/ITC availability in the pre and post-GST periods and the demands raised by the Respondent on the Applicant and other home buyers towards the value of construction on which GST liability @ 12% was discharged by the Respondent during the period 01.07.2017 to 31.12.2018, the amount of benefit of ITC not passed on to the recipients or in other words, the profiteered amount came to ₹ 1,25,33,555/- which included GST on the base profiteered amount of ₹ 1,11,90,675/-. This amount was inclusive of ₹ 1,46,656/- (including GST on the base amount of ₹ 1,30,943/-)

which was the profiteered amounts in respect of the Applicant No. 1. It was also observed that the Respondent had supplied construction services in the State of Haryana only.

14. The DGAP in his report has also stated that it was pertinent to mention that the above computation of profiteering was with respect to 422 home buyers and 13 commercial shop buyers. Whereas the Respondent had booked 512 residential units and 13 commercial shops till 31.12.2018, 90 buyers of residential units who had booked the flats and also paid the consideration in the pre-GST period, have not paid any consideration during the post-GST period from 01.07.2017 to 31.12.2018 (period covered by the investigation). Therefore, if the ITC in respect of these 90 units was considered for calculation of profiteering in respect of 435 units where payment had been received in the post-GST period, the ITC as a percentage of turnover would be distorted and erroneous. Therefore, the benefit of ITC in respect of these 90 units should be calculated when the consideration was received from such units by taking into account the proportionate ITC in respect of such 90 units.

15. The DGAP has further concluded that the Respondent had been benefited with additional ITC of 1.51% of the turnover and the same was required to be passed on to the Applicant No. 1 and the other recipients. Section 171 of the CGST Act, 2017 appeared to have been contravened by the Respondent, in as much as the benefit of ITC @1.51% of the demand raised by the Respondent during the post-GST period from 01.07.2017 to 31.12.2018, has not been passed on to the Applicant No. 1 and the other recipients. On this

account, the Respondent has realized an excess amount to the tune of ₹ 1,46,656/- from the Applicant No. 1 which included both the profiteered amount @1.51% of the basic price and GST on the said profiteered amount. Further, the investigation revealed that the Respondent had realized an excess amount of ₹ 1,23,86,899/- which included both the profiteered amount @1.51% of the basic price and GST on the said profiteered amount, from 434 other recipients who were not Applicants in the present proceedings. However, these recipients were identifiable as the Respondent had provided their names and addresses along with unit no. allotted to them. Therefore, this additional amount of ₹ 1,23,86,899/- was required to be returned to such other eligible recipients.

16. The DGAP has further stated that the present investigation covered the period from 01.07.2017 to 31.12.2018. Profiteering, if any, for the period post December, 2018 has not been examined as the exact quantum of the ITC that would 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.

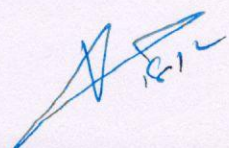
17. The DGAP has concluded that the provisions of Section 171(1) of the CGST Act, 2017 requiring that *“any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices”*, have been contravened by the Respondent in the present case.

18. The above Report was considered by the Authority in its meeting held on 24.06.2019 and it was decided to hear the above Applicant

No. 1 and the Respondent on 09.07.2019. Accordingly a notice was issued to them. Sh. Amit Tandon, the Applicant No. 1 appeared in person and Sh. Vishal Aggarwal, Advocate, Smt. Tuhina, Advocate and Sh. Naveen K. Mittal, Employee Adani Group, authorised representatives appeared on behalf of the Respondent.

19. The Applicant No. 1 filed his submissions on 22.07.2019 stating that:-

- i. He was not given any chance to review the non-confidential information/documents submitted by the Respondent as the mail sent by the DGAP was on an incorrect e-mail id. However, he trusted the examination and investigation done by the DGAP.
- ii. He further stated that as per the investigation report, the coverage of ITC was until 31st December, 2018 and the period beyond 31st December, 2018 had not been considered as part of the investigation.
- iii. Based on the demand notice sent to him by the Respondent, GST @18% had been charged on line items i.e. Preferential Location Charge, Car Parking, Club Membership Registration Charges, Power backup charges, Electric meter, FTTH, CCTV and Fire alarm, Electrification and utility charges apart from Basic Sale Price(BSP) which should have been charged at 12% instead of 18%. GST on all additional charges directly related to construction should be charged at 12% instead of 18% and the same had not been considered a part of the investigation report.



iv. Based on simple calculation of tax liability pre and post introduction of GST, his overall tax liability has gone upwards by Rs. 7 Lakh including Rs. 4.47 Lakh on BSP alone. However, as per the DGAP's report the benefit of ITC to be passed on to him was only Rs. 1.46 Lakhs. He also submitted calculation of tax pre and post GST as under:-

Table:- Tax pre and post GST

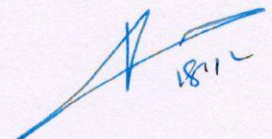
	Amount	Tax Pre GST (4.5% Service tax and 1 % HVAT)	Tax Post GST (12/18%)	Additional Tax
BSP	68,85,930	3,78,726	8,26,312	4,47,585
Car parking	7,50,000	41,250	1,35,000	93,750
PLC	2,57,900	14,185	46,422	32,238
Interest free maintenance security	2,57,900	14,185	46,422	32,238
Club membership registration charges	2,50,000	13,750	45,000	31,250
Power backup charges	2,00,000	11,000	36,000	25,000
Electric meter, FTTH, CCTV and fire alarm	70,000	3,850	12,600	8,750
Electrification and utility connection charges	2,57,900	14,185	46,422	32,238
Total Tax		4,91,130	11,94,178	7,03,048

v. In his submissions, the Applicant No. 1 further stated that the above mentioned points were meant only to provide clarifications and they were not meant to challenge any of the points mentioned in the investigation report. He agreed to the findings and would accept the refund from the Respondent as per the report along with the interest.

20. The Respondent, vide his written submissions dated 11.07.2019 stated that he did not agree with the report of the DGAP dated 19.06.2019. However, he added that without prejudice to his rights and contentions, as the subject project was a premium project of

him, and in order to avoid any negative publicity and unnecessary litigation, he was willing to accept the computation of the profiteering made in the report of the DGAP. The Respondent further stated that he undertook to pass on 30% of the ITC benefit as computed by the DGAP within 3 weeks and that he would pass on the balance amount on the issuance of the final order. He has further stated that in so far as the proposal in notice dated 27.06.2019 requiring the Respondent to show cause as to why penalty under the provisions of Section 29, 122-127 of the CGST Act, 2017 read with Rule 21 and 133 of the CGST Rules was concerned it was requested that the penalty should not be imposed in the case if this Hon'ble Authority confirmed the allegation of Profiteering. He has further mentioned that the Finance Bill, 2019 by which Section 171 of the CGST Act, 2017 was proposed to be amended by inserting subsection 3(A) provided for imposition of penalty only in case the profiteered amount was not deposited within thirty days of the date of passing of the order by the Authority. Hence, in the facts and circumstances of the present case, no penalty was warranted.

21. The Respondent vide his submissions dated 01.08.2019 has stated that he had issued credit notes for 30% of the ITC benefit as calculated by the DGAP, to the concerned customers including the Applicant herein and submitted an annexure setting forth the details of credit notes issued to each customers and some sample credit note copies. The said sample credit notes pertains to the following home buyers:-



S No.	Name Of the Home Buyer	S. No. as per Annexure-12 of DGAP's Report	Unit No. as per the Annexure-12 of the DGAP's Report	Amount of ITC benefit claimed to have been passed on through the credit notes (Amount in Rs.)
1	Sh. Amit Tandon (The Applicant)	416	B-501	43,997/-
2	Smt. Prabh Bedi & Sh. Paramdeep Singh	48	B-103	7,470/-
3	Sh. Pranav Malik and Smt. Madhumita Malik	380	D-401	5,673/-
4	Sh. Mukesh Saxena & Smt. Tripti Saxena	356	A-202	5,845
5	M/s R3M Ventures	245	C-104	5,937/-

22. Vide order dated 01.08.2019, The Authority directed the Respondent to submit the following documents:-

- a. Statement showing project-wise ITC/CENVAT Credit availed and Turnover as per the statutory Returns (GST, ST, VAT Returns) for the period from 01.04.2016 to 31.12.2018.
- b. Project-wise list of all payments received from each of the buyers and the ITC benefit passed on, if any, to them.
- c. Balance Sheets for the years 2016-17, 2017-18 & 2018-19 along with the project wise Trial Balance for the same period.
- d. Ledger for the period from 01.04.2016 to 31.12.2018.
- e. Details of the total number of apartments/flats/commercial units/residential units in the project with total area of each flat.
- f. Tran-2 Returns.
- g. Details of Credit Reversal, if any.

h. Agreement between the land owner and the builder for the subject project.

23. The Respondent, vide his submissions dated 21.08.2019, submitted the following information/documents:-

- a. Statement showing project wise ITC/Cenvat Credit availed and Turnover as per the statutory Returns for the period from 01.04.2016 to 31.12.2018. He has stated that he has only one project.
- b. Project wise list of all the payments received from each of his buyers and ITC benefit passed on. He further stated that the information provided was business sensitive and therefore confidential and requested this Authority to not supply a copy of the same to the Applicant No. 1.
- c. Balance sheets for the years 2016-17, 2017-18 and 2018-19 alongwith the project wise Trial Balance for the same period. He further stated that he has only one project and therefore no project wise Trial Balance was available.
- d. Ledger of Expenditure maintained during the period 01.04.2016 to 31.12.2018.
- e. Details of the total number of apartments/flats/commercial units/residential units in the project with total area of each flat.
- f. He stated that he had not filed Tran-2 Return. However, copy of Tran-1 filed was annexed.
- g. The details of credit reversal, which were available in the GSTRs.

h. Copy of the Joint Development Agreement and Supplementary Joint Development Agreement.

24. The Respondent was further directed to submit the following documents/details vide order dated 21.08.2019:-

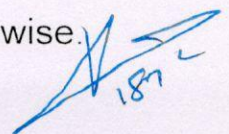
- a. Details of all the sold and unsold flats alongwith the copies of Completion Certificate & Occupation Certificate.
- b. Details of all the payments received from any 10 flat buyers who had booked flats when the project was started and got occupancy certificate in the post-GST period.
- c. To present the Joint Development Agreement and Supplementary Joint Development Agreement in Original before this Authority.

25. The Respondent, vide his submissions dated 03.09.2019, submitted the following documents/information:-

- a. Details of all the sold and unsold flats alongwith the copies of Completion Certificate and Occupancy Certificate.
- b. Details of all the payments received from the 10 flat buyers who had booked flats when the project had started and got occupancy certificate in the post GST period.
- c. In respect of the Joint Development Agreement, the Respondent further submitted that the Joint Development Agreement was with the bank for loan and enclosed the copy of the letter from the bank.

26. Vide order dated 03.09.2019, the Authority again directed the Respondent to submit the following documents/details:-

- a. Details of total number of flats constructed tower-wise.



- b. Total number of flats sold up to 31.12.2018.
- c. Total number of flats sold from 01.01.2019 to 12.02.2019.
- d. Details of Credit/ITC available as on 12.02.2019.
- e. Details of Reversal of credit as on 12.02.2019.
- f. Total profiteered amount for the flats sold up to 31.12.2018.
Details thereof.
- g. Copy of sample receipt from the Applicant alongwith other recipients/flat owners in respect of the profiteered amount made to them.

27. The Respondent, vide his submissions dated 10.09.2019, submitted that 87 flats have been constructed in each of the Towers A to F, 58 flats in Tower-G and 88 flats each in Tower H & J. He also submitted the details relating to the number of flats sold up to 31.12.2018. He also submitted that he had not sold any flat during the period from 01.01.2019 to 12.02.2019. He further stated that the opening GST credit balance as per the Electronic Credit Ledger was Rs. 10,10,96,515/- in February 2019 and that since February 2019, he has reversed an amount of Rs. 2,24,71,268/- in terms of Rule 42 of the CGST Rules, 2017. He also submitted the unit wise breakup of profiteered amount. Further, he has stated that in respect of the 90 customers, who have been sold units but no demands were raised to them till 31.12.2018, he has undertaken to pass on the benefit of ITC applying the ratio, as calculated in the DGAP's Report, upon receipt of the final order of the Authority. He also furnished a sample credit note of the Applicant No. 1 and four

other customers, along with courier receipts, as proof of having passed on the benefit of ITC.

28. We have carefully considered the Report of the DGAP, submissions made by the Respondent and the above Applicant. On examining the various submissions we find that the following issues need to be addressed:-

- a. Whether there was any violation of the provisions of Section 171 (1) of the CGST Act, 2017 in this case?
- b. If yes then what was the quantum of profiteering?

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

(1). Any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices.”

30. It is clear from the plain reading of Section 171 (1) mentioned above that it deals with two situations one relating to the passing on the benefit of reduction in the rate of tax and the second pertaining to the passing on the benefit of the ITC. On the issue of reduction in the tax rate, it is apparent from the DGAP's Report that there has been no reduction in the rate of tax in the post GST period; hence the only issue to be examined is as to whether there was any net benefit of ITC with the introduction of GST. On this issue, we observe from the DGAP Report that the ITC, as a percentage of the turnover, that was available to the Respondent during the pre-GST

period (April-2016 to June-2017) was 5.57%, whereas, during the post-GST period (July-2017 to December-2018), it was 7.08%. This confirms that in the post-GST period, the Respondent has been benefited from additional ITC to the tune of 1.51% (7.08%-5.57%) of his turnover and the same is required to be passed on by him to the eligible flat buyers, including the Applicant No. 1. We observe that the computation of the amount of ITC benefit to be passed on by the Respondent to the eligible flat buyers works out to Rs. 1,25,33,555/-. We also observe that the said computation of the amount of profiteering worked out by the DGAP is based on the data and information supplied by the Respondent himself. We also take note of the fact that the Respondent has not challenged the said mathematical computation and has agreed to pass on the ITC benefit to the recipients. Hence we observe that the amount of profiteering computed by the DGAP is correct and therefore, we take the view that the provisions of Section 171(1) of the CGST Act, 2017 have been contravened in the present case as the Respondent had been benefited from additional ITC in the post-GST regime.

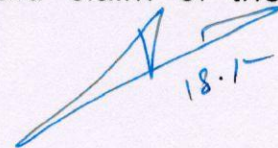
31. Further, it has been revealed from the record that the Respondent has profited an amount of Rs. 1,25,33,555/- for the period of investigation. Therefore, in view of the above facts, this Authority, under Rule 133 (3) (a) of the CGST Rules, 2017, orders that the Respondent shall reduce the price to be realized from the buyers of the flats commensurate with the benefit of ITC received by him as has been detailed above. The above amount of Rs. 1,25,33,555/- which includes 12% GST on the base profited amount of

Rs.1,11,90,675/-, has been profiteered by the Respondent from the Applicant No. 1 and other flat buyers which is required to be refunded to the Applicant No. 1 and other flat buyers alongwith interest @18% from the date when the above amount was profiteered by him till the date of payment as per the provisions of Rule 133 (3) (b) of the above Rules. It is pertinent that the above amount of profiteering includes an amount of Rs. 1,46,656/- including GST @12% on the base amount of Rs. 1,30,943/- which has been profiteered by the Respondent from the Applicant No. 1. The Respondent is also liable to pass on the benefit to the other eligible home buyers as detailed by the DGAP in Annexure-12 of the Report. Therefore, the Respondent is directed to pay the profiteered amount of Rs. 1,25,33,555/- as also the interest applicable thereon to the eligible home buyers including the Applicant No. 1, as detailed at Annexure-12 of the report of the DGAP.

32. As far as the total additional ITC that will be available to the Respondent is concerned, it cannot be determined at this stage when the construction of the project is yet to be completed and the DGAP is directed to carry out a comprehensive investigation at the time of issue of occupancy certificate. The present investigation is only up to 31.12.2018 and 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 any other buyer, 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

Respondents. All these amounts and interest shall be paid by the Respondent within a period of 3 months from the date of this order failing which the same shall be recovered by the concerned Commissioner CGST/SGST as per the provisions of Rule 136 of the CGST Rules, 2017, under the supervision of the DGAP. A detailed Report confirming the action taken on the directions passed vide this order shall be submitted by the concerned Commissioner CGST/SGST within a period of 4 months from the date of this order.

33. The Respondent vide his submissions dated 01.08.2019 has claimed that he has issued credit notes to his concerned customers including the Applicant No. 1 to the tune of 30% of the profiteered amount computed by the DGAP in his report. However, the Respondent has only submitted sample copies of credit notes dated 30.07.2019 issued by him to the Applicant No. 1 and four other flat buyers as detailed at Para 21 of the order. We observe that the Respondent has failed to submit any proof of having passed on the ITC benefit to the other eligible buyers. Further, passing on of the ITC benefit by the Respondent to the Applicant No. 1 and the four recipients in respect of whom he has furnished credit notes since the said credit notes were not furnished by the Respondent before the DGAP. For the same reason, the claim of the Respondent regarding his having passed on the benefit to the other eligible buyers can also not be accepted as evidence. Therefore, the said claim of the Respondent is not accepted.



34. It is also evident from the above narration of the facts that the Respondent has denied benefit of ITC to the buyers of the flats being constructed by him in his "Oyster Grande" project in contravention of the provisions of Section 171 (1) of the CGST Act, 2017 and has thus resorted to profiteering. Hence, he has committed an offence under section 171 (3A) of the CGST Act, 2017 and therefore, he is apparently liable for imposition of penalty under the provisions of the above Section. Accordingly, a 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. Accordingly, the notice dated 26.06.2019 vide which it was proposed to impose penalty under Section 29, 122-127 of the above Act read with Rule 21 and 133 of the CGST Rules, 2017 is withdrawn to that extent.

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

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




Sd/-
(Amand Shah)
Technical Member

Sd/-
(B. N. Sharma)
Chairman

Certified Copy

o/c


(A.K Goel)
(Secretary, NAA)

File No. 22011/NAA/50/Adani/2019/7288-94

Dated: 18.12.2019

Copy to:-

1. M/s Adani M2K Projects LLP, Plot No 83, Sector-32, Gurugram-122001.
2. Mr. Amit Tandon, Flat No. F-7, Bandhu Vihar Apartments, Plot No. 11, Sector-10, Dwarka, New Delhi-110075.
3. Director General Anti-Profiteering, Indirect Taxes & Customs, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.
4. 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 and Planning Department, Plot No. 3, Sec-18A, Madhya Marg, Chandigarh-160018.
7. NAA Website/Guard File.


18.1