

BEFORE THE NATIONAL ANTI-PROFITEERING AUTHORITY
UNDER

THE CENTRAL GOODS & SERVICES TAX ACT, 2017

Case No. 08/2020
Date of Institution 02.09.2019
Date of Order 27.02.2020

In the matter of:

1. Sh. Deepak Kumar Barnwal, 209, Mayur Residency Vistar, CIMAP Post Office, Lucknow, Uttar Pradesh.
2. Director General of Anti-Profiteering, Indirect Taxes & Customs, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.

Applicants

Versus

M/s Manas Vihar Sahakari Awas Samiti Ltd., 17/24, Picnic Spot Road, Indira Nagar, Lucknow-226010.

Respondent

Quorum:-

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

Per D.K.
27/2/2020

Present:-

1. None for the Applicant No. 1.
2. None for the Applicant No. 2.
3. Sh. Shalabh Pandey, Chartered Accountant and Smt. Vidisha Pandey, Chartered Accountant for the Respondent.

ORDER

1. The present Report dated 30.08.2019 has been received from the Applicant No. 2 i.e. the Director General of Anti-Profiteering (DGAP) after detailed investigation under Rule 129 (6) of the Central Goods & Service Tax (CGST) Rules, 2017. The brief facts of the present case are that the Applicant No. 1 had filed application dated 05.09.2018 (Annexure-1) before the Standing Committee on Anti-profiteering stating that the Respondent had resorted to profiteering in respect of supply of construction service related to the purchase of a house under the Pradhan Mantri Aawas Yojna (PMAY) in the Respondent's project "Mayur Residency Extension". He had also alleged that the Respondent had charged GST @ 18% on the construction service/ works contract service and had not passed on the benefit of input Tax Credit (ITC) to him by way of commensurate reduction in the price of the house after implementation of the GST w.e.f. 01.07.2017, in terms of Section 171 of the CGST Act, 2017. The said application

was examined by the Standing Committee on Anti-profiteering in its meeting held on 11.03.2019 and upon being prima facie satisfied that the Respondent had contravened the provision of Section 171 (1) of the CGST Act, 2017, it had forwarded the same with its recommendation to the DGAP for a detailed investigation. The aforesaid recommendation was received by the DGAP on 27.03.2019 (Annexure-2).

2. The DGAP in his Report dated 30.08.2019 has stated that the Applicant No. 1 had submitted copies of the written communication held by him with the Respondent and copies of the demand letters alongwith his application.
3. Thereafter, the DGAP on receipt of the reference from the Standing Committee on Anti Profiteering, had issued a notice to the Respondent on 09.04.2019 (Annexure-3) under Rule 129 (3) of the above Rules, calling upon the Respondent to reply as to whether he admitted that the benefit of ITC had not been passed on by him to the Applicant No. 1 by way of commensurate reduction in the 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 the supporting documents. The Respondent was also given an opportunity to inspect the non-confidential evidence/information furnished by the Applicant No. 1 during the period from 15.04.2019 to 17.04.2019. However, the Respondent did not avail of the said opportunity. Further, vide his e-mail dated 07.08.2019 (Annexure-4) the DGAP had also given an opportunity

to the Applicant No. 1 to inspect the non-confidential evidence/reply furnished by the Respondent, on 13.08.2019 or 14.08.2019, however, he also did not avail of the said opportunity.

4. The DGAP in his above Report has stated that the period covered by the current investigation was from 01.07.2017 to 31.03.2019. The time limit to complete the investigation was extended upto 26.09.2019 by this Authority vide its Order dated 19.06.2019 (Annexure-5) in terms of Rule 129 (6) of the CGST Rules, 2017.
5. The DGAP has also stated that in response to the notice dated 09.04.2019, the Respondent has submitted replies vide letters/e-mails dated 23.04.2019 (Annexure-6), 02.05.2019 (Annexure-7), 25.05.2019 (Annexure-8), 26.07.2019 (Annexure-9) and 14.08.2019 (Annexure-10) and has stated that:-

a. The Applicant No. 1 had purchased freehold Plot No. 212 in his project "Mayur Residency Extension". On the Applicant's request, the Respondent had extended the construction service on the above freehold land. The Applicant No. 1 had already claimed GST exemption on the land value and he was charging GST @ 18% only on the construction service supplied to the Applicant No. 1.

b. The Applicant No. 1 had taken housing loan under the PMAY but the house was not constructed under the PMAY. Therefore, the service fell under the construction service

(works contract service), on which the applicable rate of GST was 18%.

- c. He was regularly increasing his basic rate of construction service till 2016 and he had reduced his rate from Rs. 17,521/- per Sq. mt. to Rs. 16,820/- per Sq. mt., during the year 2017 which was 4% of the basic price of construction service and he was calculating the final impact of proportionate ITC.

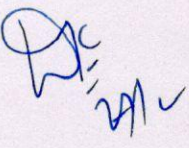
6. The DGAP in his Report has further stated that vide the aforesaid letters/e-mails, the Respondent had submitted the following documents/information:-

- a. Copies of GSTR-1 and GSTR-3B Returns for the period from July, 2017 to March, 2019.
- b. Service Tax and VAT Returns for the period from April, 2016 to June, 2017.
- c. Copies of TRAN-1 Returns for the transitional credit availed by the Respondent.
- d. Copies of VAT & ST-3 Returns for the period from April, 2016 to June, 2017.
- e. Electronic Credit Ledger for the period from July, 2017 to March, 2019.
- f. Tax rates, pre-GST and post-GST.
- g. Copies of Balance Sheets for the FY 2016-17 & 2017-18.

- h. Payment plan of the Applicant No. 1 alongwith agreement and demand letters.
- i. Details of turnover and ITC in respect of the project "Mayur Residency Extension".
- j. List of home buyers in the project "Mayur Residency Extension".

7. The DGAP has further stated that the Respondent had requested to treat all the data submitted by him as confidential, in terms of Rule 130 of the CGST Rules, 2017.

8. The DGAP in his Report has further stated that the application, various replies of the Respondent and the documents/evidence on record has been carefully examined and the main issues to be examined were (a) whether there was any benefit of reduction in the rate of tax or ITC on the supply of the construction service by the Respondent after implementation of the GST w.e.f. 01.07.2017 and if so (b) Whether the Respondent had passed on such benefits to the recipients by way of commensurate reduction in prices, in terms of Section 171 (1) of the CGST Act, 2017?

 9. The DGAP has also mentioned that the Respondent has not charged GST on the amount charged towards cost of the freehold plot and has only charged GST @ 18% on the construction service/works contract service supplied to the Applicant No. 1.

10. The DGAP in his Report has also stated that notwithstanding the contention of the Respondent that the accurate amount of ITC

benefit would be passed on to the recipients once the project was fully complete but profiteering, if any, had to be arrived at a given point of time, in terms of Rule 129 (6) of the above Rules. Therefore, the ITC available to the Respondent and the amount received by him from the Applicant No. 1 and other recipients till 31.03.2019, may need to be taken into account for computing the profited amount.

11. The DGAP in his Report has further stated that prior to 01.07.2017 i.e. in the pre-GST era, the Respondent was not availing CENVAT credit of Service Tax paid on the input services and Central Excise Duty as well as ITC of VAT paid on the inputs. However, post-GST, the Respondent could avail ITC of GST paid on all the inputs and the input services. From the data submitted by the Respondent, the details of the ITC availed by the Respondent, his turnover from the project "Mayur Residency Extension", the ratio of ITC to the turnover during the pre-GST period from April, 2016 to June, 2017 and the post-GST period from July, 2017 to March, 2019, has been furnished by the DGAP in the Table-'A' below:-

Table-A

(Amount in Rs.)

Sr. No.	Particulars	April, 2016 to June, 2017 (Pre-GST)	July, 2017 to March, 2019 (Post-GST)
1	CENVAT credit of Service Tax Paid on Input Services (A)	-	-
2	Credit of VAT paid on Inputs (B)	-	-
3	Total CENVAT/VAT Credit Available (C)= (A+B)	-	-

4	Input Tax Credit of GST (D)	-	30,49,658
5	Total Turnover as per Home buyers list (E)	26214799.00	2,54,69,428
6	Total Saleable Area of Flats in the project (in Sq. mt.) (F)	6077.50	6077.50
7	Area Sold relevant to Turnover as per Home buyers list (G)	2673.7	6077.50
8	Relevant CENVAT/Input Tax Credit (H)= [(C) or D*(G)/(F)]	-	30,49,658
9	Ratio of CENVAT/ Input Tax Credit to Turnover [(I)=(H)/(E)]*100	0.00%	11.97%

12. The DGAP has also claimed that as per Table-A, 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 Nil and during the post-GST period (July, 2017 to March, 2019), it was 11.97%. Therefore, he has submitted that it was clear that post-GST, the Respondent had apparently benefited from additional ITC to the tune of 11.97% of his turnover. Accordingly, the DGAP has computed the profiteered amount by comparing the ratio of ITC available to the turnover during the pre-GST period from April, 2016 to June, 2017 with that of the post-GST period from July, 2017 to March, 2019, when the effective GST rate on construction service was 18% imposed vide Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 (Annexure-11). On the basis of the figures mentioned in Table-A above, the comparative figures of the applicable tax rate and ratio of ITC to the turnover during the pre-GST and the post-GST periods as well as the recalibrated basic price, the excess realization (profiteering) during the post-GST period has been furnished by the DGAP in detail as per the Table-B given below:-

SK
12/11/20

Table-B

(Amount in Rs.)

S. No.	Particulars		Pre-GST	Post- GST
	Period	A	April, 2016 to June, 2017	July, 2017 to March, 2019
1	Tax Rate	B	6%	18%
2	Ratio of CENVAT credit/ Input Tax Credit to Turnover as per Table-B above (%)	C	0.00%	11.97%
3	Increase in input tax credit availed post-GST (%)	D= 11.97% less 0.00%	-	11.97%
	Analysis of Increase in input tax credit:			
4	Basic Price collected during July, 2017 to March, 2019	E		2,54,69,428
5	GST @ 18% on Basic Price	F= E*18%		45,84,497
6	Total Demand collected/raised	G=E+F		3,00,53,925
7	Recalibrated Basic Price	H= E*(1-D) or 88.03% of H		2,24,19,770
8	GST @18% on recalibrated Basic Price	I= H*18%		40,35,559
9	Commensurate Demand	J= H+I		2,64,55,329
10	Excess Realization or Profiteered Amount	K= G - J		35,98,596

13. The DGAP in his Report has also contended that as per Table-B, the additional ITC of 11.97% of the turnover should have resulted in commensurate reduction in the basic prices as well as cum-tax prices of the houses. As per the provisions of Section 171 of the CGST Act, 2017, the benefit of additional ITC was required to be passed on to the recipients. He has further contended that whereas the Respondent had stated that any such benefit would eventually be passed on to the recipients at the time of giving possession of the flats, the profiteering had to be arrived at a given point of time, in terms of Rule 129 (6) of the above Rules. The DGAP has also alleged that the Respondent had retained the benefit that had accrued to him on account of additional ITC by not reducing the pre-GST basic prices by 11.97% on account of the

benefit of additional ITC and charging GST @ 18% on the pre-GST basic prices and hence the Respondent has contravened the provisions of Section 171 of the of the CGST Act, 2017.

14. The DGAP has also reported that as regards the quantification of profiteering or the amount of benefit not passed on by the Respondent to the recipients, taking into account the aforesaid CENVAT/ITC availability pre-GST and post-GST and the details of the amount collected from the home buyers during the period from 01.07.2017 to 31.03.2019, the amount of benefit of ITC not passed on to the recipients or in other words, the profiteered amount came to Rs. 35,98,596/- which included 18% GST on the base profiteered amount of Rs. 30,49,658/-. The home buyer and unit no. wise break-up of this amount has been given in Annexure-12 by the DGAP in his Report. The DGAP has also stated that as per S. No. 12 of Annexure-12, the benefit to be passed on to the Applicant No. 1 worked out to be Rs. 19,953/- which included both the profiteered amount @11.97% of the basic price and 18% GST on the said profiteered amount. The DGAP has further reported that the Respondent has also claimed that he has passed on 4% benefit to the home buyers by way of reduction in the contract agreement value in the post-GST period. However, the DGAP has contended that the Respondent has failed to provide any evidence to show that the reduction in the contract value was on account of the ITC benefit. He has also submitted that on the basis of the details of the outward supplies submitted by the Respondent, it

appeared that the construction service has been supplied by the Respondent in the State of Uttar Pradesh only.

15. The DGAP has also claimed that post-GST, the benefit of additional ITC of 11.97% of the turnover has accrued to the Respondent in the project "Mayur Residency Extension" and the same was required to be passed on to the recipients but the Respondent has failed to do so and hence, it appeared that the provisions of Section 171 of the CGST Act, 2017 have been contravened by the Respondent. He has further claimed that on this account, additional amount of Rs. 35,78,644/- has been realized by the Respondent from 33 other recipients (excluding the Applicant No. 1) which included both the profiteered amount @ 11.97% of the basic prices and GST @ 18% on the said profiteered amount. The said 33 recipients were identifiable as per the documents provided by the Respondent and hence the above amount was required to be passed on to them.

16. The DGAP has also stated that the present investigation covered the period from 01.07.2017 to 31.03.2019 and profiteering, if any, for the period post March, 2019 had not been examined as the exact quantum of ITC that would be available to the Respondent in future could not be determined at this stage when the construction of the project was yet to be completed.

17. The above investigation Report was received by this Authority from the DGAP on 02.09.2019 and was considered in its sitting held on 03.09.2019 and it was decided to accord opportunity of

hearing to the Applicants and the Respondent on 19.09.2019. Accordingly, Notice dated 09.09.2019 was also issued to the Respondent directing him to explain why the Report dated 30.08.2019 furnished by the DGAP should not be accepted and his liability for violation of the provisions of Section 171 of the CGST Act, 2017 should not be fixed. Vide the above mentioned notice, the Respondent was also directed to submit the following documents:-

- a. Reconciliation statement showing project-wise ITC/CENVAT Credit availed and Turnover with 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 their buyers and 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. Project-wise 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-1 & TRAN-2 Returns.
- g. Details of CENVAT/ITC Reversal, if any.
- h. Details of purchase of land alongwith agreements with Group Companies/partners of the subject projects.

- c. That he has been regularly increasing his basic rate till 2016 and has reduced his rate in the post GST regime from Rs. 17,521/- per sq. mt. to Rs. 16,820/- per sq. mt. which was 4% of the basic price/consideration (i.e. Rs. 17,521/ - minus Rs. 16,820/- equal to Rs. 701/-, which was 4% of Rs. 17521/-) to pass on the 4% ITC to the customers.
- d. That in the normal course, his basic rate for 2017 was proposed as Rs. 19,623/- per sq. mt. but he had decided to reduce the price/consideration commensurate with the benefit provided through the ITC of GST. Thus, the price/consideration was reduced by 14.29% to Rs. 16,820/- per sq. mt. although the ITC was to be much lower than 14.29% (i.e. approx. 11.97% as per DGAP's Report). His intention was bona fide to transfer the maximum ITC benefit to the customers and to minimise any extra burden on them. The calculation of profiteering on the proposed basic rate of Rs. 19,623/- per sq. mt. has been furnished by the Respondent in the Table-C below:-

DK
2017

Table-C

(Amount in Rs.)

S.No.	PARTICULARS		PRE-GST	POST-GST
	Period	A	April,2016 to June,2017	July,2017 to March,2019
1	Tax Rate	B	6%	18%
2	Ratio of Cenvat credit/input tax credit	C	0.00%	11.97%

- i. Copy of RERA Registration.

18. The Respondent vide his submissions dated 09.10.2019 has stated:-

- a. That he has not contravened any Rules or Section of the CGST Act and has reduced his rates in the post-GST regime. On completion of the project, he was transferring the final benefit of ITC to the customers in the form of refund of money. He has also enclosed copies of the receipt of ITC/calculation sheet.
- b. That he did not agree with the profiteered amount calculated by the DGAP vide Table-B of his Report. He has passed on the maximum benefit to the customers. He has been regularly increasing his basic rate of construction till financial year 2016 as was evident from the copies of the agreements of contract attached by him. The increase in the base rate was furnished by the Respondent as is given below:-

Particulars	Financial Year	Rates Charged	Overall Impact-yearly increase
Work Contract Rates	2013	12912.00	
Work Contract Rates	2014	14020.00	8.58
Work Contract Rates	2015	15530.00	10.77
Work Contract Rates	2016	17521.00	12.82
Work Contract Rates	2017	19623.52	12.00
Reduced Contract Rate	2017	16820.00	-14.29

	To turnover (%)			
3	Increase in input tax credit availed post-GST(%)	D=11.97% LESS 0.00%		11.97%
	Analysis of increase in input tax credit:			
4	Basic price/consideration collected during July, 2017 to March, 2019	E		25469428
5	GST @ 18% on basic price/consideration	F=E*18%		4584497
6	Total demand collected /raised	G=E+F		30053925
7	Recalibrated basic price/consideration	<u>88.03% of @19623.5 2/sq. mt. i.e. proposed increased in year 2017</u>		26157082.72
8	GST @ 18% on recalibrated basic price/consideration	I=H*18%		4708275
9	Commensurate demand	J=H+I		30865358
10	Excess realization or profiteering amount	K=G-J		-811433

e. That it was quite evident that 4% of basic price/consideration was immediately reduced to pass on 4% ITC benefit to the customers and the rest approximately 4% was paid at the time of completion of the project.

f. That he was attaching calculation sheet duly acknowledged by the customers as evidence in support of reduction in the price/consideration from Rs. 17,521/- to Rs. 16,820/- and final payment of amount of the ITC benefit. The details of the calculations furnished by him are as per the Table-D below:-

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Table - D				
S.No.	Particulars		Pre-GST	Post-GST
	Period	A	April, 2016 to June, 2017	July, 2017 to March, 2019
1	Tax rate	B	6%	18%
2	Ratio of Cenvat credit/input tax credit to Turnover	C	0.00%	11.97%
3	Increase in input tax credit availed post-GST(%)	D=11.97% less 0.00%		11.97%
	Analysis Of Increase In ITC:			
4	Basic price/consideration collected during July,2017 to March,2019	E		25469428.00
5	GST @ 18% on basic price/consideration	F=E*18%		4584497.04
6	Total demand collected /raised	G=E+F		30053925.04
7	Recalibrated basic price/consideration	88.03% of @17521/sq. mt. i.e. basic rate at the time of implementation of GST Act		23355157.03
8	GST @ 18% on recalibrated basic price/consideration	I=H*18%		4203928.26
9	Commensurate demand	J=H+I		27559085.29
10	Excess realization or profiteering amount	K=G-J		2494839.75
11	Already passed on by reducing price/consideration @701/sq. mt.	(refer below chart)	4.17	1061479.00
12	By way of repayment in cash/bank at the time of completion	(refer below chart)	4.00	1018773.00
13	Balance to be paid		1.63	414587.75

g. The Respondent has further furnished his own calculation to compute the quantum of profiteering as per Table-E below:-

Table-E

(Amount in Rs.)

Before GST rates	17521.00			
Post GST rates	16820.00			
Before GST demand	26530823.83			
Post GST demand	25469348.60			
Amount received/ demand raised pre GST period	0.00			
A:input GST benefit by way of reduction in price/consideration				
Particulars	Work/payment completed in %		Pre GST rates	Amount due

Amount due pre GST			17521.00	26530823.83
Service rendered in pre GST	0.00		17521.00	0.00
Balance amount due after post GST regime	100.00		16820.00	25469348.60
Net amount due after passing GST benefit	100.00		16820.00	25469348.60
Immediate passed on 4% GST input by reduction of rates by 4% of basic rate after post GST regime			16820.00	1061475.23
Benefit already passed on				1061475.23
B:input GST benefit by way of refund of input on post GST payment.				
Particulars		Construction cost paid	GST paid on basic rate @ 18%	Total amount paid (cost+GST)
Payment made in post GST regime i.e. on or after 01/07/2017 (excluding security amount)		25469348.60	4584482.75	30053831.35
Input GST benefit by refund of input on post GST payment made				
Particulars		Construction cost paid	Input credit benefit@ 4% of construction cost	Input credit benefit@ 4% of construction cost
			4.00%	
Input GST credit to be refunded to you is 4% of construction cost on amount paid		25469348.60	1018773.94	1018773.94
Total GST input benefit passed on				
Particulars			Reference row	Amount (in Rs.)
By way of reduction in price/consideration. Already passed on :1=a			1	1061475.23
By way of refund. To be refunded :2=b			2	1018773.94
Total input GST credit passed on: 3=(a+b)=(1+2)			3	2080249.17
Our cost before GST: 4 (refer a)			4	26530823.83
GST due before any input benefit:5= (4*18%)			5	4584482.75
Amount passed on by way of input:6=(a+b)=(1+2)			6	2080249.17
Final net GST burden :7=(5-6)			7	2504233.57
% of final input GST burden:8=(7/4)*100			8	9.83
% of final input GST benefit passed on:9=(7/4)*100			8	7.84

h. That as per his calculation Rs. 4,14,587/- was the profiteered amount which was to be passed on to the customers.

- i. That as per his calculation the amount to be passed on to the Applicant No. 1 was Rs. 11,532.04/- instead of Rs. 19,953/- as was mentioned in the DGAP's Report. The calculation of the profiteered amount due to the Applicant No. 1 has also been furnished by the Respondent as below:-

Before GST Rates	17521.00			
Post GST Rates	16820.00			
Area	91.63			
Before GST Demand	147101.40			
Post GST Demand	141216.00			
Amount Received/ Demand Raised Pre GST Period	0.00			
A: Input GST Benefit By Way Of Reduction In Price/Consideration				
Particulars	Work/Paym ent Completed In %	Covered Area	Pre GST Rates	Amount Due
Amount Due Pre GST				147101.40
Service Rendered In Pre GST	0.00			0.00
Balance Amount Due Post GST Regime	100.00			141216.00
Net Amount Due After Passing GST Benefit To You	100.00			141216.00
Immediate Passed On 4% GST Input By Reduction Of Rates By 4% Of Basic Rate After Post GST Regime				5885.40
Benefit Already Passed On				5885.40
B: Input GST Benefit By Way Of Refund Of Input On Post GST Payment.				
Particulars		Constructi on Cost Paid	GST Paid On Basic Rate @ 18%	Total Amount Paid (Cost+GST)
Payment Made In Post GST Regime i.e. On Or After 01/07/2017 (Excluding Security Amount)		141216.00	25418.88	166634.88
Input GST Benefit By Refund Of Input On Post GST Payment Made				

Dr = 2/2

Particulars	Constructi on Cost Paid	Input Credit Benefit @ 4% Of Constructi on Cost	Input Credit Benefit @ 4% Of Constructio n Cost
			4.00%
Input GST Credit To Be Refunded Is 4% Of Construction Cost On Amount Paid .	141216.00	5648.64	5648.64
Total GST Input Benefit Passed On			
Particulars		Reference Row	Amount (In Rs)
By Way Of Reduction In Price/Consideration. Already Passed On :1=A		1	5885.40
By Way Of Refund. To Be Refunded :2=B		2	5648.64
Total Input GST Credit Passed On:3=(A+B)=(1+2)		3	11534.04
Our Cost Before GST: 4 (Refer A)		4	147101.40
GST Due Before Any Input Benefit:5= (4*18%)		5	25418.88
Amount Passed On By Way Of Input:6=(A+B)=(1+2)		6	11534.04
Final Net GST Burden:7=(5-6)		7	13884.84
% of Final Input GST Burden:8=(7/4)*100		8	9.83
% Of Final Input GST Benefit Passed On:9=(7/4)*100		8	7.84

j. The Respondent vide his above submissions has also submitted the following details:-

- i. GST reconciliation statement for the period from 01.07.2017 to 31.03.2019.
- ii. GSTR-9 & GSTR-9C Returns for the financial year 2017-18.
- iii. VAT and Service Tax Returns for the period from 2016-17 and 2017-18.
- iv. Nil CENVAT folder for the period from 2016-17 and 2017-18.

Dr. [Signature]

- v. Service Tax Record folder for the period of 2016-17 and 2017-18.
- vi. Service Tax Audit Reports till June-2017.
- vii. Project wise list of payments received and ITC passed on.
- viii. Balance Sheets for the Financial Years 2016-17, 2017-18 and 2018-19.
- ix. Project wise ledger for the period from 01.04.2016 to 31.12.2018.
- x. Details of total number of apartments and area.
- xi. TRAN-1 and TRAN-2 Returns-NA (Not Claimed).
- xii. Details of CENVAT/ITC Reversal-NA (Not Claimed).
- xiii. Details of Purchase of Land.
- xiv. Copy of RERA Registration: The Respondent has stated that his projects were not registered with the UP RERA because he was facing technical problem in registration of the projects. He has submitted copies of his communication with the UP RERA.

19. Supplementary Report was also sought from the DGAP on the above submissions of the Respondent. The DGAP vide his submissions dated 21.10.2019 has stated:-

- a) That his investigation Report has covered the period from 01.07.2017 to 31.03.2019. Notwithstanding the contention of the Respondent that the accurate amount of ITC benefit that

ought to be passed on to the recipients would be known once the project was fully completed, the profiteering, if any, had to be arrived at a given point of time in terms of Rule 129 (6) of the CGST Rules, 2017. Therefore, the ITC available to the Respondent and the amount received by him from the home buyers till 31.03.2019 had been taken for determining the profiteering. Further, the ITC that would be available in future had not been taken into account for calculation of profiteering. This concern of the Respondent has already been addressed in para 12 of his Report dated 30.08.2019. The Respondent has failed to establish that his claim of rate reduction in the post-GST regime was on account of additional benefit of ITC. It might be due to any reason like reduction in the cost of construction or any marketing condition etc.

20. That in the Report dated 30.08.2019, the increase in the ITC availed by the Respondent as a percentage of the total turnover in the post GST period has been quantified. To arrive at profiteering, he has computed the increase in availability of ITC for the period from 01.07.2017 to 31.03.2019, compared to the ITC available in the pre-GST period from 01.04.2016 to 30.06.2017.

21. The Respondent vide his submissions dated 25.10.2019 has also submitted:-

i. That in pursuance of Section 171 of the CGST Act, 2017, he has taken the following steps:-

a) He has reduced his rates in the post GST regime thereby attempting to not increase his profit due to GST input. He has also furnished the details of a few cases to depict the above stated action:-

Customer Name	Annex-A Page No.	Scheme Name	H. No.	Date of Agreement/ allotment	Area	Rates	Cost
Krishna Kumar	1	Mayur Residency	28L	05.09.2016	145.39	17521	2547378.19
Kanchan Mishra	3	Mayur Residency	213	08.08.2016	91.63	17521	1605449.23
Dheer Singh	5	Mayur Residency	156	24.01.2017	143.59	17521	2515840.39
Shweta Singh	7	Mayur Residency	109	16.06.2016	112.84	17521	1977069.64
Deepak Kumar	24	Mayur Residency	165	14.11.2016	88.03	17521	1542373.63
Prashant Gupta	10	Mayur Residency	116	01.11.2017	91.63	16820	1541216.6
Rajesh K. Singh	12	Mayur Residency	162	15.07.2017	95.29	16820	1602777.8
Shyam	14	Mayur Residency	161	15.07.2017	95.29	16820	1602777.8
Shalini Sharma	16	Mayur Residency	155	14.11.2017	129.07	16820	2170957.4
Priyanka Srivastava	18	Mayur Residency	117	14.11.2017	129.07	16820	2170957.4
Guru Dutt	22	Mayur Residency	155	11.01.2019	113.53	16820	1909574.6

b) He has passed on the ITC benefit by way of refund vide account payee cheques to his customers as per the annexed Table-1.

ii. That he has submitted copies of the agreements (Annexure-A) in support of his claim that he has reduced the price of construction from Rs. 17,521/- per sq. mt. to Rs. 16,820/- per sq. mt. after the introduction of GST.

- iii. That he has also submitted acknowledgements from the customers (Annexure-B) of their having received the ITC benefit as supplementary evidence.
- iv. That the documents produced by him were bilateral as the sheets were counter signed and duly acknowledged by the respective customers. These documents were legal evidence of acceptance by the customers that they had accepted the benefit passed on to them by way of reduction in prices given by the Respondent due to the anti-profiteering clause brought in by Section 171 of the CGST Act, 2017. The calculation sheet No. 9 had been duly acknowledged by the Applicant No. 1 and he had accepted that the Respondent had reduced the price and discharged the final ITC benefit.
- v. That as per his calculation, the amount to be passed on to the Applicant No. 1 was Rs. 11,534/- instead of Rs. 19,553/- as was evident from the Table-F below:-

Table-F

(Amount in Rs.)

Before GST Rates	17521.00			
Post GST Rates	16820.00			
Area	91.63			
Before GST Demand	147101.40			
Post GST Demand	141216.00			
Amount Received/ Demand Raised Pre GST Period	0.00			
A:Input GST Benefit By Way Of Reduction In Price				
Particulars	Work/Payment Completed In %	Covered Area	Pre GST Rates	Amount Due
Amount Due Pre GST				147101.40

Service Rendered In Pre GST	0.00			0.00
Balance Amount Due After Post GST Regime	100.00			141216.00
Net Amount Due After Passing GST Benefit	100.00			141216.00
Immediate Passed On 4% GST Input By Reduction Of Rates By 4% Of Basic Rate After Post GST Regime				5885.40
Benefit Already Passed On				5885.40
B:Input GST Benefit By Way Of Refund Of Input On Post GST Payment.				
Particulars		Construction Cost Paid	GST Paid On Basic Rate @ 18%	Total Amount Paid (Cost+GST)
Payment Made In Post GST Regime i.e. On Or After 01/07/2017 (Excluding Security Amount)		141216.00	25418.88	166634.88
Input GST Benefit By Refund Of Input On Post GST Payment Made				
Particulars		Construction Cost Paid	Input Credit Benefit@ 4% Of Construction Cost	Input Credit Benefit@ 4% Of Construction Cost
			4.00%	
Input GST Credit To Be Refunded Is 4% Of Construction Cost On Amount Paid		141216.00	5648.64	5648.64
Total GST Input Benefit Passed On				
Particulars			Reference Row	Amount (In Rs)
By Way Of Reduction In Price. Already Passed On :1=A			1	5885.40
By Way Of Refund. To Be Refunded :2=B			2	5648.64
Total Input GST Credit Passed On To You :3=(A+B)=(1+2)			3	11534.04
Our Cost Before GST: 4 (Refer A)			4	147101.40
GST Due Before Any Input Benefit:5= (4*18%)			5	25418.88
Amount Passed On By Way Of Input:6=(A+B)=(1+2)			6	11534.04
Final Net GST Burden On You :7=(5-6)			7	13884.84
% Of Final Input GST Burden On You :8=(7/4)*100			8	9.83
% Of Final Input GST Benefit Passed On To You :9=(7/4)*100			8	7.84

- vi. That the construction of Applicant No. 1's flat had been completed and as per his own calculations the total refund due to the Applicant No. 1 was Rs. 1,25,821/-, out of which an amount of Rs. 64,233/- had been adjusted as reduction in price and balance amount of Rs. 61,649/- was paid through banking channels. He has also claimed that as per

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Annexure-B (Page No. 9), the Applicant No. 1 has himself acknowledged that the rate had been reduced by the Respondent.

- vii. The Respondent has further requested to recalculate his liability with recalibrated price of Rs. 17,521/- per sq. mt. and has furnished his calculations as has been mentioned in the Table-G below:-

Table-G (Amount in Rs.)

S.No.	Particulars		Pre-GST	Post-GST
	Period	A	April, 2016 To June, 2017	July, 2017 To March, 2019
1	Tax Rate	B	6%	18%
2	Ratio Of Cenvat Credit/Input Tax Credit	C	0.00%	11.97%
	Turnover As Per Table -B Above(%)			
3	Increase in Input Tax Credit Availed Post-GST(%)	D=11.97% Less 0.00%		11.97%
	Analysis Of Increase In Input Tax Credit:			
4	Basic Price Collected During July,2017 To March,2019	E		25469428.00
5	GST @ 18% On Basic Price	F=E*18%		4584497.04
6	Total Demand Collected /Raised	G=E+F		30053925.04
7	Recalibrated Basic Price	@17521/Sq. mt. i.e. Basic Rate At The Time Of Implementation Of GST Act		23355157.03
8	GST @ 18% On Recalibrated Basic Price	I=H*18%		4203928.26
9	Commensurate Demand	J=H+I		27559085.29
10	Excess Realization Or Profiteering Amount	K=G-J		2494839.75
11	Already Passed On By Reducing Price @701/Sq Ft		4.17	1061479.00
12	By Way Of Repayment In Cash/ Bank At The Time Of Completion		4.00	1018773.00
13	Balance To Be Paid		1.63	414587.75

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viii. The Respondent has also accepted that as per his calculations, the recalibrated basic price was Rs. 2,33,55,157/- at Rs. 17,521/- per sq. mt. and an amount of Rs. 24,94,839/- was the excess amount collected from the customers out of which Rs. 10,61,479/- had already been passed on to the customers and there was balance of Rs. 14,33,360/-.

ix. The Respondent has also submitted the details of his projects (Annexure-C) which shows that under the 'Works Contract Service', other than the project 'Mayur Residency Ext.', the Respondent was also executing two projects viz. 'Manas City Ext. Phase-I' and 'Manas Enclave Phase-II'. Under the 'Residential/Commercial Construction', the Respondent has been engaged in executing two other projects i.e. 'Mayur Complex' and 'Mayur Residency Ext. Complex'.

22. The Respondent vide his submissions dated 18.11.2019 has submitted the following documents/information:-

a. Copies of the agreements (Annexure-1) made with the following buyers during March-2017 to June-2017 as follows:-

S. No.	Customer Name	Date Of Agreement	House No	Area-In Sq. Mt.	Rate/ Sq. Mt.	Amount-Rs.	Annexure 1	
							Page No.	Point No.
1	Shweta Singh	28/03/2017	109	112.84	17521	1977069.6	1	04 & 05
2	Geeta Gupta	15/05/2017	113	108.67	17521	1904007.1	3	04 & 06

3	Ram Harsh	18/06/2017	118	91.74	17521	1607376.5	5	04 & 06
4	Kiran Tripathi	20/06/2017	115	92.04	17521	1612632.8	7	04 & 06

b. The Respondent has stated that the rate of construction mentioned in the contracts was uniform irrespective of the area. He has also submitted the details of the rates prevalent during the particular period (Annexure-1A) as below:-

Category	Start date	End date	Rate	Units sold
Residential	01/09/2014	01/01/2016	15530/sq mt	8
	01/02/2016	30/06/2017	17521/sq/mt	16
	01/07/2017	Till date	16820/sq/mt	8
Commercial	-----	-----	-----	2
Total				34

c. The Respondent has also annexed Bank Account Statement (Annexure-2) and has stated that 4 customers had not collected the cheques and 3 cheques had been issued but not presented by the customers.

d. The Respondent has further annexed the list of recipients (Annexure-3) to whom benefit of ITC/rate reduction has been passed on at the rate of 4% and 8% as per the list given in Annexure-12 of the DGAP's Report.

e. The Respondent has also stated that the total ITC benefit passed on to the customers by way of reduction in the prices was Rs. 10,00,329/- and by way of refund was Rs.

12,20,865/-, total amounting to Rs. 22,21,194/-. He has

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also stated that he has annexed the acknowledgments (Annexure-4) from the customers in support of his claim that he had passed on the ITC benefit by way of reductions and refunds.

23. The Respondent vide his e-mail dated 19.11.2019 has also filed written submissions stating:-

- a. That he was in agreement with the DGAP Report that he has to pass on the benefit of ITC to the recipients.
- b. That as per DGAP's Report, he was required to pass on 11.97% of gross receipts collected during the impugned period. He has annexed the chart depicting the quantum of 11.97% of gross receipts and also 4% amount passed by way of reduction in price and 4% by way of cheque.
- c. That the balance amount of profiteering payable by him to his customers was Rs. 6,35,065/-.
- d. That while calculating the profiteering, the DGAP has used the term 'Recalibrated Price' which was 88.03% (100%-11.97%) of the gross receipts. The DGAP has not considered reduction in the price while calculating the Recalibrated price from Rs. 17,521/- per sq. mt. to Rs. 16,820/- per sq. mt. which was approximately 4.17% of the rate. According to him, the recalibrated price should be Rs. 2,32,88,278/- as per the Table- H below:-

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Table-H

(Amount in Rs.)

		Ref Col Of Chart- A- Attached		Post-GST July, 2017 To March, 2019
Tax Rate				18%
Ratio Of Cenvat Credit/Input Tax Credit				11.97%
Basic Price Collected During July,2017 To March,2019		1		25469428
Total Basic Price Collected		1		25469428
GST @ 18% On Basic Price		2		4584497
Total Demand Collected /Raised		3		30053925
Recalculated Price				
88.03% Of Amount Collected i.e. Rs 25469428	25469428	1 & 5	88.03	22419769
Amount Foregone By Reducing Rates		6		867541
Total Recalculated Price Should Be				23287310
GST @ 18% On Recalibrated Basic Price	23287310			4191715
Commensurate Demand				27479026
Excess Realization Or Profiteering Amount				2574898
Less Already Passed On By Way Of Reduction		11		867541
Less Already Passed On By Way Of Repayment		12		1072292
Net Amount Payable				635065

24. This Authority has carefully examined the DGAP's Reports, the written submissions of the Respondent and the other material placed on record. The issues to be decided by this Authority in the present case are as under:-

- 1) Whether the Respondent has availed benefit of additional ITC which he was liable to pass on to his buyers?
- 2) Whether any violation of the provisions of Section 171 of the CGST Act, 2017 has been committed by the Respondent?
- 3) If yes then what was the quantum of profiteering?

25. Perusal of Section 171 (1) of the CGST Act shows that it provides 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.”

26. It is clear from the plain reading of Section 171 (1) mentioned above that it pertains to the passing on the benefit of reduction in the rate of tax and that of benefit of ITC. On the issue of reduction in the rate of tax, 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 determined is as to whether there was any additional benefit of ITC with the introduction of GST which has accrued to the Respondent which he was required to pass on to his buyers. It has also been revealed from the DGAP's Report 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 NIL and during the post-GST period from July-2017 to March-2019, it was 11.97%. This confirms that, post-GST, the Respondent has been benefited from additional ITC to the tune of 11.97% (11.97%-0%) of his turnover and the same was required to be passed on by him to the Applicant No. 1 and the

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other recipients. The DGAP has calculated the amount of ITC benefit to be passed on by the Respondent to all the recipients as Rs. 35,98,596/- vide Table-B Supra on the basis of the information supplied by the Respondent.

27. The Respondent vide his submissions dated 09.10.2019 has claimed that he has been regularly increasing his basic rate of construction which was being charged by him to the customers till the financial year 2016 but he has reduced his rate in the post GST regime from Rs. 17,521/- per sq. mt. to Rs. 16,820/- per sq. mt. which was 4% of the basic price/consideration and hence he has passed on the benefit of ITC to the extent of 4% to the customers. However, perusal of the submissions of the Respondent does not show what was the basis of reduction in the cost of construction from Rs. 17,521/- per sq. mt. to Rs. 16,820/- per sq. mt. He has also not explained or produced evidence to show whether this reduction was due to passing on the benefit of ITC or due to other factors. The Respondent has also claimed that the above benefit was passed on uniformly @ 4% to all the buyers however, the same was to be passed on the basis of the amount collected by the Respondent from each of them as the area constructed and the amount realised on construction was different in each case. The DGAP in his supplementary Report dated 21.10.2019 has clearly mentioned that the Respondent has failed to prove during the course of the investigation that the reduction in


the rate of construction was due to the benefit of ITC and has

claimed that the reduction could be due to any reason like reduction in the cost of construction and the marketing conditions etc. Therefore, the above contention of the Respondent cannot be relied upon in the absence of reliable and cogent evidence.

28. The Respondent has also claimed that he had proposed to increase the rate of construction to Rs. 19,623/- per sq. mt. during the year 2017 however, he had reduced it to Rs. 16,820/- per sq. mt. which was 14.29% less and in case the profiteering was computed @ Rs. 19,623/- per sq. mt. the excess realisation or the profited amount would be Rs. (-) 8,11,433/- as per Table-C furnished by him. However, the above contention of the Respondent is untenable as the benefit of ITC cannot be calculated on the basis of the rate of cost of construction. Further, this rate was neither charged by the Respondent nor was required to be taken in to account while computing the profited amount as the same is to be calculated on the basis of the additional benefit of ITC which has accrued to the Respondent in the post GST period which is further required to be passed on to the buyers proportionate to the amount paid by each of them. Therefore, the above computation of the profited amount made by the Respondent is incorrect and hence, the same cannot be accepted.

29. The Respondent has further claimed vide Table-D supra that the profited amount was Rs. 24,94,839.75 out of which he had passed on Rs. 10,61,479/- by reducing the rate on the cost of

construction by Rs. 701/- per sq. mt. and had passed on Rs. 10,18,773/- by way of cash reimbursement or through bank transfers and hence, he was required to pass on the balance amount of Rs. 4,14,587.75 only to his customers. However, as has been discussed above the Respondent has not produced any reliable and cogent evidence to prove that the reduction in the rate of construction was due to the passing on the benefit of ITC and hence the above claim of the Respondent that he has passed on an amount of Rs. 10,61,479/- on this ground cannot be accepted. Another claim of the Respondent that he has passed on an amount of Rs. 10,18,773/- by way of cash or bank transfers is also not established as the Respondent had not made any such claim before the DGAP. The DGAP has also not verified the above claim of the Respondent. The Respondent has also submitted different figures of the amount of benefit which he has claimed to have passed on through bank transfers. In view of this the above claim of the Respondent can also not be accepted. Therefore, the contention made by the Respondent that he is liable to pass on benefit of Rs. 4,14,587.75 is not tenable. Accordingly, the computations made by the Respondent vide Table-E supra are incorrect and cannot be relied upon.

 30. The Respondent has also contended that at as per his calculations the amount to be passed on to the Applicant No. 1 was Rs. 11,534.04/- instead of Rs. 19,953/-. However, perusal of the calculations made by the Respondent shows that he has

taken in account an amount of Rs. 5,885.40 which he has claimed to have passed on as reduction in the cost of construction and Rs. 5648.64 (Total Rs. 11,534.04/-) which he has claimed to have passed on as refund. Since, both the above claims have not been found to be correct as has been mentioned above the amount of benefit computed by the Respondent is not correct and hence the amount of Rs. Rs. 19,953/- computed by the DGAP is held to be correct.

31. The Respondent vide his submissions dated 25.10.2019 has further contended that he had reduced his rates of construction in the post GST regime to pass on the benefit of ITC. He has also submitted copies of the allotment letters/agreements as per Annexure-A to prove that before coming in to force of the GST w.e.f. 01.07.2017 he was charging Rs. 17,521/- per sq. mt. as cost of construction and post GST implementation he had reduced the cost to Rs. 16,820/- and hence he had passed on the benefit of ITC by reducing the cost by Rs. 701/- per sq. mt. or by 4%. However, perusal of the allotment letters/agreements issued to S/Sh. Prashant Gupta, Rajesh Kumar Singh, Shrishyam, Mrs. Shalini Mishra, Mrs. Priyanka Srivastava and Sh. Gurudutt (Annexure-A of Table-1) shows that no mention has been made in them to the effect that the rate of construction was being reduced to Rs. 16,820/- per sq. mt. due to passing on the benefit of ITC. Therefore, the claim made by the Respondent in this regard is not tenable and hence the same cannot be accepted.

32. The Respondent has also stated that he has passed on the ITC benefit of Rs. 8,47,441/- by way of reduction in the rate of construction and Rs. 8,10,884/- by way of refund vide account payee cheques to his 16 customers as per the Annexure-B of Table-1. He has also submitted acknowledgements from the customers (Annexure-B) of having received the ITC benefit as supplementary evidence. However, as has been mentioned above the claim made by the Respondent that he has passed on the benefit of ITC by reducing the rate of construction has not been found to be correct and hence the above claim of the Respondent cannot be accepted. As far as the contention of the Respondent regarding passing on the benefit of ITC through cheques is concerned the Respondent has not produced any reliable evidence to support his claim. Moreover, the Respondent has also furnished different figures of benefit which he has claimed to have passed on through cheques. Therefore, his above claim on his mere assertion cannot be accepted.

33. The Respondent has also recalculated his liability with recalibrated price of Rs. 17,521/- per sq. mt. as per Table-G and claimed that he was required to pay only Rs. 4,14,587.75 as ITC benefit. However, the methodology adopted by the Respondent to compute the benefit of ITC is not correct as he has not charged the above price at any stage after coming in to force of the GST and hence the above computation of the Respondent is wrong and hence the same cannot be accepted.

34. The Respondent vide his submissions filed on 09.10.2019 has vehemently contended that in the pre-GST regime, he has been regularly increasing his basic rate of construction till the financial year 2016 and in the post-GST regime from the financial year 2017, the basic rate has been reduced from Rs. 17,521/- per sq. mt. to Rs. 16,820/- per sq. mt. i.e. reduction of Rs. 701/- per sq. mt. which amounted to 4% reduction in the basic rate, has been made. Through his above submissions, the Respondent has also submitted his own calculation of the benefit to be passed on vide which he has claimed that he has passed on total ITC benefit of Rs. 20,80,249/- to the recipients out of which an amount of Rs. 10,61,475/- has been passed on by way of reduction in the basic rate of construction and Rs. 10,18,773/- has been passed on by way of refund and the balance amount of Rs. 4,14,587/- was still payable by him to the recipients. The Respondent again vide his submissions dated 18.11.2019 has stated that he has passed on total ITC benefit of Rs. 22,21,194/- to his recipients out of which benefit of Rs. 10,00,329/- was passed on by way of reduction in the basic rate and Rs. 12,20,865/- was given by way of refund. Further, vide his submissions filed through e-mail dated 19.11.2019, the Respondent as per his own calculation, has computed the profiteered amount as Rs. 25,74,898/-, out of which an amount of Rs. 8,67,541/- has been claimed to have been passed on by him to the recipients by way of reduction in the rate of construction and Rs. 10,72,292/- by way of repayment/refund

and therefore, profiteered amount of Rs. 6,35,065/- was still payable by him to the recipients. It is apparent from the above submissions of the Respondent that as per his own calculations, he has computed different amounts of the benefit of ITC or the profiteered amount which he is required to pass on to his recipients. The Respondent has not followed a uniform mathematical methodology to calculate the benefit of ITC. Therefore, the calculations and the methodology adopted by the Respondent cannot be accepted as reliable, accurate and correct. Accordingly, the claims of the Respondent that he has passed on benefit of ITC by way of reduction in prices and by way of refund, are fallacious and hence the same cannot be accepted.

35. The Respondent vide his submissions dated 25.10.2019 has also stated that as per his calculations, the amount of ITC benefit to be passed on to the Applicant No. 1 was Rs. 11,534/- instead of Rs. 19,953/- as has been computed vide Annexure-12 of the DGAP's Report. Vide his above submissions the Respondent has further claimed that as per his calculations, the benefit of ITC which has been passed on to the Applicant No. 1 was Rs. 1,25,821/-, out of which an amount of Rs. 64,233/- has been adjusted as reduction in the price and the balance amount of Rs. 61,649/- has been paid through banking channels. Keeping in view the above written submissions, it can be safely concluded that the both the above claims made by the Respondent are contradictory and are ambiguous. Hence, the mathematical calculations and

methodology applied by the Respondent to arrive at the profiteered amount in respect of the above Applicant cannot be accepted.

36. Based on the above facts the amount of the benefit of ITC to be passed by the Respondent to his buyers or the profiteered amount, during the period from 01.07.2017 to 31.03.2019, is determined as Rs. 35,98,596/- which includes 18% GST on the base profiteered amount of Rs. 30,49,658/- as has been detailed in Annexure-12 of the DGAP's Report dated 30.08.2019, as per Rule 133 (1) of the CGST Rules, 2017. The profiteered amount in respect of the Applicant No. 1 is determined as Rs. 19,953/- which also includes GST @18%. 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 customers/buyers commensurate with the benefit of ITC received by him as has been detailed above. The above amount of Rs. 35,98,596/- which includes 18% GST on the base profiteered amount of Rs. 30,49,658/- has been profiteered by the Respondent from the Applicant No. 1 and the other recipients/buyers which is required to be refunded to the Applicant No. 1 and the other recipients/buyers as per the Annexure-12 of the DGAP's Report dated 30.08.2019 alongwith interest @18% from the date from when the above amount was collected by him from them till the date of payment as per the provisions of Rule 133 (3) (b) of the above Rules. The present investigation is only up to 31.03.2019

therefore, any additional benefit of ITC which shall accrue subsequently shall also be passed on to the recipients/buyers by the Respondent. In case this additional benefit is not passed on to the Applicant No. 1 and the other recipients/buyers, they shall be at liberty to approach the State Screening Committee Uttar Pradesh 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 recipients/buyers in future. The profiteered amount along with applicable 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 the CGST/SGST Act, 2017, under the supervision of the DGAP.

37. This Authority as per Rule 136 of the CGST Rules 2017 directs the jurisdictional Commissioner of CGST/SGST Uttar Pradesh to monitor this order under the supervision of the DGAP by ensuring that the amount profiteered by the Respondent as ordered by this Authority is passed on to all the eligible customers/buyers. A report in compliance of this order shall be submitted to this Authority by the concerned Commissioner CGST /SGST within a period of 4 months from the date of receipt of this.
38. It is also evident from the above narration of facts that the Respondent has denied benefit of ITC to the buyers of the flats

being constructed by him in his Project 'Mayur Residency Extension' in contravention of the provisions of Section 171 (1) of the CGST Act, 2017 and he has thus apparently committed an offence under Section 171 (3A) of the above Act and therefore, he is liable for imposition of penalty under the provisions of the above Section. Accordingly, a notice be issued to him directing him to explain as to 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.

39. The Respondent vide his submissions dated 25.10.2019 has also admitted that he was executing four other projects viz. (i) Manas City Extension Phase-I, (ii) Manas Enclave Phase-II, (iii) Mayur Complex and (iv) Mayur Residential Complex as is evident from the perusal of Annexures C and C1-C5. He has also admitted that he has passed on the benefit of ITC on some of these projects by way of reduction in the rate of construction or by way of refund through banking channels. Keeping in view the above admissions of the Respondent there are sufficient reasons to believe that there is need to examine whether the Respondent has passed on the benefit of ITC to the buyers of the above projects or not. Therefore, this Authority, in terms of the provisions of Section 171 (2) of the CGST Act, 2017 read with Rule 133 (5) (a) of the CGST Rules 2017 directs the DGAP to further investigate the above projects of the Respondent for violation of the provisions of

Section 171 of the CGST Act 2017 and to submit his Report as per the provisions of Rule 133 (5) (b) of the CGST Rules, 2017.

40. A copy of this order be sent to the Applicants, the Respondent, Commissioner CGST/SGST Uttar Pradesh as well as the Principal Secretary (Town and Country Planning), Government of Uttar Pradesh free of cost for necessary action. File of the case be consigned after completion.

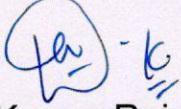
Sd/-
(B. N. Sharma)
Chairman

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

Sd/-
(Amand Shah)
Technical Member



Certified Copy


(Dev Kumar Rajwani)
(Deputy Commissioner, NAA)

File No. 22011/NAA/58/Manas/2019

Dated: 27.02.2020

Copy to:-

1. M/s Manas Vihar Sahakari Awas Samiti Ltd., 17/24, Picnic Spot Road, Indira Nagar, Lucknow-226010.
2. Mr. Deepak Kumar Barnwal, 209, Mayur Residency Vistar, CIMAP Post Office, Lucknow, Uttar Pradesh.
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 commercial Taxes, U.P. Commercial Tax head office Vibhuti Khand, Gomti Nagar, Lucknow-226010(U.P.).

5. The Principal Chief Commissioner, CGST & Central Excise, Lucknow Zone, 7-A, Ashok Marg, Lucknow-226001 (U.P).
6. Principal Secretary to Govt. of Uttar Pradesh, Town and Planning Department, TCG/1-A-V/5, Vibhuti Khand, Gomti Nagar, Lucknow-226010(U.P).
7. NAA Website/Guard File.

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= 28/12/2020