

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

Case No. 29/2020
Date of Institution 10.12.2019
Date of Order 27.05.2020

In the matter of:

1. Shri Kapil Dev Sharma, BCSP ESG HQ, NSG Palam, New Delhi-110037.
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 Vikas Parks Pvt. Ltd., Plot No. 264, Okhla Industrial Area,
Phase-III, New Delhi-110020.

Respondent

Quorum:-

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



Present:-

1. None for Applicants and the Respondent.

ORDER

1. The present Report dated 06.12.2019 has been received from the Applicant No. 2 i.e. the Director General of Anti-Profiteering (DGAP) after a 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 an application dated 20.02.2019 (Annexure-1) stating that the Respondent had resorted to profiteering in respect of the supply of construction services related to the purchase of Flat No. Tower-3/1602 in the Respondent's project "Hero Homes", Sector-104, Dwarka Expressway, Gurugram. The Applicant No. 1 had also alleged that the Respondent had not passed on the benefit of Input Tax Credit (ITC) by way of commensurate reduction in the price of the apartment purchased by him.
2. The said application was examined by the Haryana State Screening Committee on Anti-Profiteering in its meeting held on 03.04.2019 and it observed extra charging of GST by the Respondent in terms of Section 171 of the CGST Act and had forwarded the said application with its recommendation to the Standing Committee on Anti-profiteering for further action, as per the provisions of Rule 128 of the CGST Rules, 2017.



3. The Standing Committee on Anti-profiteering examined the aforesaid application in its meeting held on 15.05.2019 and it was decided to forward the same to the DGAP for detailed investigation under Rule 129 (1) of the CGST Rules, 2017 to examine whether the benefit of reduction in the rate of tax or ITC had been passed on by the Respondent to his recipients. The DGAP had received the minutes of the meeting of the Standing Committee on Anti-Profiteering on 27.06.2019.
4. Thereafter, the DGAP had issued a notice to the Respondent on 09.07.2019 (Annex-2) 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 to the Applicant No. 1 by way of commensurate reduction in price with respect to the project mentioned in his Application dated 20.02.2019 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 said notice, the Respondent was also given an opportunity to inspect the non-confidential evidence/information furnished by the Applicant No. 1 during the period 17.07.2019 to 19.07.2019. However, the Respondent did not avail of the said opportunity. Vide e-mail dated 30.10.2019 (Annex-3), Applicant No. 1 was also given an opportunity to inspect the non-confidential evidence/reply furnished by the Respondent on 04.11.2019 or 05.11.2019. The Applicant No. 1 availed of the said opportunity. The DGAP has stated that the

investigation in this case had been carried out for the period from 01.07.2017 to 30.06.2019.

5. In his Report the DGAP has stated that in response to the notice dated 09.07.2019, the Respondent replied vide letters/e-mails dated 19.07.2019 (**Annex-4**), 22.07.2019 (**Annex-5**), 22.10.2019 (**Annex-6**), 30.10.2019 (**Annex-7**) 19.11.2019 (**Annex-8**) and 26.11.2019 (**Annex-9**). The Respondent has stated:-

- a. That a project in the name of "Hero Homes" at Sector-104, Dwarka Expressway, Gurugram, Haryana-122001 had been executed by him and the said project had been registered & approved by the Haryana Real Estate Regulatory Authority, Gurugram ("HARERA") under Section 5 of the Real Estate (Regulation & Development) Act, 2016 w.e.f. 13.11.2018 bearing registration number RC/REP/HARERA/GGM/2018/24 dated 13.11.2018.
- b. That the building plan of the project had been approved by the Town and Country Planning (TCP), Haryana vide Memo No. ZP968/AD (RA)/2018/21871 dated 24.07.2018 i.e. post implementation of Goods and Service Tax Act, 2017.
- c. That the project was launched on 07.12.2018 i.e post implementation of GST.
- d. That the construction activity of the project had been started in the month of March, 2019 i.e. post implementation of GST.



- e. That the Applicant No. 1 was a resident of Village & Post office Ole, Mathura, Uttar Pradesh-281122 and had made an application dated 02.02.2019 for booking of Apartment No. 1602 in Tower T-3 of the Project having super area 1099 sq. ft. as per his preference of the location of the Apartment.
6. Vide the aforementioned letters/e-mails, the Respondent also submitted:-
- (a) Copies of GSTR-1 & GSTR-3B Returns for the period July, 2017 to June, 2019.
 - (b) Copies of ST-3 Returns for the period April, 2016 to June, 2017.
 - (c) Copies of all demand letters issued and sale agreement made with the Applicant.
 - (d) Copy of Balance Sheet for FY 2016-17 and 2017-18.
 - (e) Electronic Credit Ledger for the period 01.07.2017 to 31.03.2019.
 - (f) List of home buyers in the project "Hero Homes".
 - (g) Copy of Project report submitted to the RERA.
 - (h) Tran-1 for the period July, 2017 to December, 2017.
 - (i) Details of applicable tax rates, pre-GST and post-GST.
 - (j) Copy of the first invoice raised with the projection construction cost dated 30.03.2019.



7. The DGAP has reported that he has carefully examined the various replies of the Respondent and the documents/evidence placed on record. The main issues for determination were whether the Respondent had benefited from the reduction in the rate of tax or the ITC after implementation of the GST on the supply of the construction services w.e.f. 01.07.2017 and if so, whether such benefit was passed on by the Respondent to the recipients, in terms of Section 171 of the CGST Act, 2017.
8. The DGAP has further reported that the Respondent had submitted a copy of the Project Report for the proejct "Hero Homes" and the payment schedule for the purchase of flats and vide letter dated 22.07.2019 and subsequent letter, submitted copies of demand letters issued to the Applicant No. 1. The details of the payment plan of the Aplicant No. 1 has been furnished by the DGAP in Table-'A' below:-

Table-'A'

(Amount in Rs.)

Sr. No.	Payment Stage	Due Date	Description	Amount (in Rs.)	CGST (in Rs.)	SGST (in Rs.)	Grand Total (in Rs.)
1	At the time of booking	04.02.19	BSP	4,00,000/-	24,000/-	24,000/-	4,48,000/-
2	Within 30 days of booking	06.03.19	BSP EDC & IDC PLC	2,32,470/- 52,203/- 35,718/-	13,948/- -- 3,215/-	13,948/- -- 3,215/-	3,54,717/-
3	Within 90 days of booking	05.05.19	BSP EDC & IDC PLC	6,32,470/- 52,203/- 35,718/-	37,948/- -- 3,215/-	37,948/- -- 3,215/-	8,02,717/-
4	Within 150 days of booking	04.07.19	BSP EDC & IDC PLC	6,32,470/- 52,203/- 35,718/-	37,948/- -- 3,215/-	37,948/- -- 3,215/-	8,02,717/-
5	On Application of OC		BSP EDC & IDC PLC	37,94,820/- 3,13,215/- 2,14,305/-	2,27,689/- -- 19,287/-	2,27,689/- -- 19,287/-	48,16,292/-
6	On offer of Possession		BSP EDC & IDC **IFMS Power Backup2 KVA PLC	6,32,470/- 52,201/- 54,950/- 50,000/- 35,716/-	37,948/- -- -- 4500/- 3,214/-	37,948/- -- -- 4500/- 3,214/-	9,16,661/-
TOTAL (A)				73,08,850/-	4,16,127/-	4,16,127/-	81,41,104/-

7	Adhoc Charges	Administration Charge against name deletion	5,000/-	450/-	450/-	5,900/-
		Administration Charge against name addition	5,000/-	450/-	450/-	5,900/-
Total (B)			10,000/-	900/-	900/-	11,800/-
Total (A) + (B)			73,18,850/-	4,17,027/-	4,17,027/-	81,52,904/-

9. The DGAP in his Report has stated that prior to the implementation of GST w.e.f. 01.07.2017, Service Tax on construction service was chargeable @ 4.50% (vide Notification No. 14/2015-ST dated 19.05.2015). After implementation of GST w.e.f 01.07.2017, GST on construction service was chargeable @ 18% (effective rate was 12% in view of 1/3rd abatement on value) on construction service vide Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 and the effective GST rate on construction service in respect of affordable and low-cost houses upto a carpet area of 60 square metres was further reduced to 12% GST (effective rate was 8% in view of 1/3rd abatement on value), vide Notification No. 1/2018-Central Tax (Rate) dated 25.01.2018. Thus, the DGAP has observed that in the case of construction service the effective rate of tax (@ 4.5%) in the Pre-GST era was lower than the effective rate of tax @ 8% or 12% as applicable, in Post-GST era.

10. Further, the DGAP has mentioned that on scrutiny of the documents received from the Standing Committee on Anti-profiteering, it was observed that the Haryana State Screening Committee had stated that in the subject case, extra charging of GST by the Respondent and date of booking was not mentioned.

The Applicant No. 1 had made an application dated 02.02.2019 for booking of Apartment No. 1602 in Tower T-3 of the Project having super area 1099 sq. ft. as per his preference of the location of the Apartment and that the first payment was made by the Applicant vide Cheque No. 604081 dated 04.02.2019 of Rs 4,00,000/-. It was also stated that the price charged for the said residential flat was a new project developed and constructed by the Respondent after implementation of GST, hence the anti-profiteering provisions should not be applicable to this project.

11. The DGAP has further stated that the Respondent contended that Anti-profiteering provisions do not apply to the project "Hero Homes" as this project was not in existence before the implementation of GST and was launched in the GST regime. The Respondent has also stated:-


- a. That the said project had been registered and approved by the HARERA under Section 5 of the Real Estate Regulation & Development Act, 2016 w.e.f 13.11.2018 bearing registration number RC/REP/HARERA/GGM/2018/24 dated 13.11.2018.
- b. That the building plan of the project "Hero Homes" had been approved by the TCP, Haryana vide Memo No. ZP-968/AD(RA)/2018/21871 dated 24.07.2018.
- c. That the project was launched on 07.12.2018 i.e. post implementation of GST.



- d. That the project "Hero Homes" was started in the month of March, 2019 and the first invoice raised by him for the project construction cost was dated 30.03.2019.
- e. That the Applicant had made an application dated 02.02.2019 for booking of Apartment No. 1602 in Tower T-3 of the Project having super area 1099 sq. ft. as per his preference of the location of the Apartment and that the first payment was made by the Applicant No. 1 vide Cheque No. 604081 dated 04.02.2019 of Rs 4,00,000/-.
12. The DGAP has further stated that from the above points stated in para 11 above, it was clear that the project was launched by the Respondent in the GST regime and the Respondent had made no sale or even booking of the flats in the pre-GST regime. Further, the Respondent had made the first booking in the project on 22.12.2018 and there was no price history of the units sold in the pre-GST era which could be compared with the post-GST base price to determine whether there was any profiteering. That in the present case, the registration and approval of the project, building Plan, the launching of the project, the allotment of units, receipt of payments etc. had all taken place in the post-GST regime. Therefore, there was no pre-GST tax rate or ITC structure which could be compared with the post-GST tax rate and ITC. The Respondent would have taken into consideration the benefits of ITC which was available to him post implementation of GST while fixing the base price. On the basis of the details of the

outward supply of Construction services submitted by the Respondent, the DGAP had observed that the service was supplied in the State of Haryana only.

13. The DGAP has further reported that Section 171 of the CGST Act, 2017 came into play in the event where there was a reduction in the rate of tax or there was an increase in the benefit of ITC. In the present case, since the project itself was launched after implementation of GST w.e.f. 01.07.2017, there was no pre-GST tax rate or ITC availability that could be compared with the post-GST tax rate and ITC, to determine whether there was any benefit that was required to be passed on by way of reduced price.
14. Further, the DGAP has concluded that in view of the afore mentioned findings, it appeared that Section 171(1) of the CGST Act, 2017 has not been contravened by the Respondent in the present case.
15. The above investigation Report was received by this Authority from the DGAP on 10.12.2019 and was considered in its sitting held on 12.12.2019 and it was decided to accord an opportunity of hearing on 07.01.2020 to the Applicant No. 1 only. Applicant No. 1 vide e-mail dated 08.01.2020 has stated that he was in agreement with the investigation Report of the DGAP.
16. This Authority has carefully examined the DGAP's Report and the written submissions of the Applicant No. 1 placed on record. The issues to be decided by the Authority are as under:-



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

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, the DGAP in his Report, has reported that the project "Hero Homes" situated at Sector-104, Dwarka Expressway, Gurugram, Harayana-122001 had been registered and approved by the HARERA under Section 5 of the Real Estate (Regulation & Development) Act, 2016 w.e.f. 13.11.2018 bearing registration number RC/REP/HARERA/GGM/2018/24 dated 13.11.2018 and the building plan of the project had been approved by the TCP.

Haryana vide Memo No. ZP968/AD (RA)/2018/21871 dated 24.07.2018 i.e. post implementation of GST. The DGAP has further reported that the said project was launched by the Respondent on 07.12.2018 i.e. in the post-GST regime and the construction activity had started in the month of March-2019. It is clear from the DGAP Report that the Respondent had launched the subject project in the post-GST regime and there wasn't any demand raised by the Respondent in the pre-GST regime. The registration and approval of the project, launching of the project and receipt of the payments had taken place in the post-GST regime and hence, there was no pre-GST tax rate or ITC structure which could be compared with the post-GST tax rate and ITC. On this basis, the DGAP has reported that the Respondent had neither benefited from additional ITC nor had there been a reduction in the tax rate in the post-GST period and therefore it does not qualify to be a case of profiteering.

We find no reason to differ from the Report of DGAP and we therefore agree with his findings that the the provisions of Section 171 of the CGST Act 2017 have not been contravened in this case.

18. Applicant No. 1 vide his above submissions has also stated that he is in agreement with the Investigation Report dated 06.12.2019 furnished by the DGAP.
19. In view of our above findings, we conclude that the instant case does not fall under the ambit of Anti-Profiteering provisions of

Section 171 of the CGST Act, 2017. Therefore, the allegation that the Respondent has not passed on the benefit of ITC in this case is not found sustainable. Accordingly, the application filed by Applicant No. 1, requesting action against the Respondent for alleged violation of the provisions of Section 171 of the CGST Act is dismissed being not maintainable.

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



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

Sd/-
(Amand Shah)
Technical Member

Sd/-
(Dr. B. N. Sharma)
Chairman

Certified Copy

o/c

(A.K. Goel)
Secretary, NAA

File No. 22011/ NAA/109/Vikas/2019 / 2087-2090 Dated: 27.05.2020

Copy To:-

1. M/s Vikas Parks Pvt. Ltd., Plot No. 264, Okhla Industrial Area, Phase-III, New Delhi-110020.
2. Sh. Kapil Dev Sharma, BCSP ESG HQ, NSG Palam, New Delhi-110037.
3. Director General Anti-Profiteering, Central Board of Indirect Taxes & Customs, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.
4. Guard File.


A. K. GOEL
SECRETARY, NAA