

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

Case No. : 47/2022  
Date of Institution : 31.03.2021  
Date of Order : 26.07.2022

**In the matter of:**

1. Sh. Ajay Sood, 91, Cantt, Jhansi – 284001.
2. Director General of Anti-Profiteering, Central Board of Indirect Taxes & Customs, 2<sup>nd</sup> Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.

Applicants

**Versus**

M/s Eldeco County Ltd, F.F., Virendra Smriti Complex, 15/54 B,  
Civil Lines, Kanpur-208 001.

Respondent

**Quorum:-**

1. Sh. Amand Shah, Chairman & Technical Member,
2. Sh. Pramod kumar Singh, Technical Member,
3. Sh. Hitesh shah, Technical Member.

**Present:-**

1. None for the Applicant No. 1.
2. Sh. Shivendu Pandey, Supdt., for the DGAP.
3. Sh. Gagan Gugnani, C.A. for the Respondent.

**ORDER**

1. The present Report dated 31.03.2021 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 Standing Committee on Anti-Profiteering, received an application under Rule 128 of the CGST Rules, 2017, filed by the Applicant No. 1

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before the Authority, alleging profiteering in respect of construction service supplied by the Respondent. The Applicant No. 1 alleged that the Respondent had not passed on the benefit of ITC to him by way of commensurate reduction in the price of a Villa No. J-03 (TOPAZ Module-B) purchased by him from the Respondent in his Project "Eldeco County", situated at Rajghar, Jhansi on introduction of GST w.e.f. 01.07.2017, in terms of Section 171 of the CGST Act, 2017.

2. The DGAP in its Report dated 31.3.2021, inter-alia stated that:-
- i. The aforesaid application was initially examined by the Uttar Pradesh State Screening Committee and was forwarded to the Standing Committee on Anti-Profiteering for further action. The said application was again examined by Standing Committee on Anti-profiteering, in his meeting, the minutes of which were received by the DGAP on 15.10.2020, whereby it was decided to forward the same to the DGAP to conduct a detailed investigation in the matter. Accordingly, investigation was initiated to collect evidence necessary to determine whether the benefit of ITC had been passed on by the Respondent to his customers in respect of construction service supplied by the Respondent.
  - ii. On receipt of the reference from the Standing Committee on Anti-profiteering, a notice under Rule 129 of the Rules was issued by the DGAP on 05.11.2020, calling upon the Respondent to reply as to whether he admitted that the benefit of ITC had not been passed on to his customers 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 said notice; the Respondent was also given an opportunity to inspect the non-confidential evidences/information

furnished by the Applicant No. 1 during the period 12.11.2020 to 13.11.2020. However, the Respondent did not avail of this opportunity.

- iii. The period covered by the current investigation was from 01.07.2017 to 30.09.2020.
- iv. The time limit to complete the investigation was 14.04.2021.
- v. In response to the notice dated 05.11.2020, the Respondent submitted his reply vide letters and e-mails dated 13.11.2020, 19.11.2020, 21.12.2020, 15.01.2021, 01.02.2021, 12.02.2021, 26.02.2021, 02.03.2021 and 25.03.2021. Vide the aforementioned letters, the Respondent submitted the following documents/information:
  - a. Brief Profile of the Respondent.
  - b. Copies of GSTR-1 returns for the period July, 2017 to September, 2020.
  - c. Copies of GSTR-3B returns for the period July, 2017 to September, 2020.
  - d. Copies of GSTR-9 returns for the FY 2017-18.
  - e. Tran-1 and Tran-2 for the period July, 2017 to December, 2017.
  - f. Electronic Credit Ledger for the period July, 2017 to September, 2020.
  - g. Copies of VAT returns (including all annexures) & ST-3 returns for the period April, 2016 to June, 2017.
  - h. Copies of all demand letters issued and sale agreement made with the Applicant.
  - i. Details of VAT, Service Tax, ITC of VAT, Cenvat credit for the period April, 2016 to June, 2017 and output GST

and ITC of GST for the period July, 2017 to September,2020.

- j. Details of applicable tax rates, Pre-GST & Post-GST.
  - k. Balance sheet for the FY 2016-17,2017-18,2018-19 & 2019-20.
  - l. Status of the project "Eldeco County" as on 30.09.2020 in terms of tower-wise sold and unsold units along with copies of Occupancy Certificates.
  - m. Cenvat/Input Tax Credit Register for the FY 2016-17, 2017-18, & 2018-19.
  - n. List of home buyers in the project "Eldeco County" along-with details of benefit passed on.
  - o. Completion Certificate of the project.
  - p. Architect Certificate of specific units completed before GST regime.
  - q. Allotment card for the customers.
- vi. The important submissions of the Respondent has been summarised below:-
- a. Comparison of ratio of ITC to Turnover for pre-GST period and post-GST period was not the correct mechanism for calculation of profiteering amount.
  - b. Benefit passed by the Respondent should be added in turnover computation.
  - c. Land value should have to be excluded for calculation of profiteering amount
  - d. The Report could not go beyond the application submitted by the Applicant on 29.04.2019

- e. In the absence of prescribed method of calculation of profiteering in the act or the rules or the procedure, the proceedings were arbitrary and liable to be set aside.
- f. The complaint filed by the Applicant No. 1 was not valid since the Applicant No. 1 was not the active customer of the Respondent at the time of filing the complaint.
- g. The unit of Applicant No. 1 was cancelled on 15.04.2019 due to non- payment of milestone payment by the Applicant No. 1 even after repeated reminders. A copy of cancellation letter was communication to the Applicant No. 1. Accordingly, the complaint filed by the Applicant No. 1 was not valid and the entire investigation should be dropped on this ground itself.
- h. Without prejudice to the above, it was submitted that Respondent had booked the unit of the Applicant No. 1 after considering the benefit of ITC which was duly mentioned in the Allotment Card.
- i. In respect of 2 villas, the Respondent stated that the prices had been agreed considering the benefit of ITC as duly mentioned in the Allotment Card and in respect of 3 villas the Respondent had passed on the benefit of ITC of Rs. 3,04,830 /-.
- j. The Respondent stated that he had opted for new scheme issued vide Notification No. 03/2019-Central Tax (Rate) dated 29.03.2019. In terms of this Notification the Respondent was required to pay Tax/GST @ 5% without taking/availing the benefit of Input Tax Credit.
- k. The details of Units booked in different periods along with

corresponding area, were as follows: -

S. No.	Details for the Project	Units	Built-up Area
A.	Number of Units booked as on 30.06.2017	114	2,14,394
B.	Number of Units booked from 01.07.2017 to 30.09.2020 before completion of certificate/occupation certificate	2	4,066
C.	[(A) + (B)]	116	2, 18,460
D.	Unsold Units as on the date of completion certificate/ occupation certificate	1	2,157
E.	Total Units [(C) + (D)]	117	2,20,617

1. Alternatively, classification of units booked before completion certificate/ occupation certificate was as under:-

S.No.	Detail for the Project	Units	Built-up Area
A.	Number of Units booked before completion certificate/ occupation certificate	116	2,18,460
B.	Number of Units which had been booked before GST regime whose entire consideration was billed before GST regime	101	1,89,704
C.	Remaining number of units [(A) - (B)]	15	28,756

- vii. Vide notice dated 26.12.2019, the Respondent was informed that if any information/documents was provided on confidential basis, in terms of Rule 130 of the Rules, a non-confidential summary of such information/ documents was required to be furnished. However, the Respondent did not submit any summary.

- viii. The subject application, various replies of the Respondent/Applicant No. 1 and the documents/evidences on

record has been carefully examined. The main issues for determination were:-

- a. Whether there was benefit of reduction in rate of tax or ITC on the supply of construction service by the Respondent after implementation of GST w.e.f. 01.07.2017 and if so,
  - b. Whether the Respondent passed on such benefit to the recipients by way of commensurate reduction in price, in terms of Section 171 of the CGST Act, 2017.
- ix. Another relevant point in this regard was 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) which 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 CGST 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 had been received after issuance of completion certificate, where required, by the competent authority or after his first occupation, whichever was earlier.*" Thus, the ITC pertaining to the residential units which was under construction but not sold was provisional input tax credit which might be required to be reversed by the Respondent, if such units remain unsold at the time of issue of the completion certificate, in terms of Section 17(2) & Section 17(3) of the CGST 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 exempted 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 exempted supply under subsection (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 might not fall within the ambit of this investigation and the Respondent was required to recalibrate the selling price of such units to be sold to the prospective buyers by considering the proportionate benefit of additional ITC available to him post- GST.

- x. The Respondent has expressed concern with respect to the approach of comparison of ITC to turnover ratio of pre-GST and post-GST period and it was submitted that there was a direct relation of ITC availed with that of output tax to be paid, as the use of ITC was only towards making payment of his output liability and no refund of unutilized ITC could be allowed under Section 54(3) of the CGST Act, 2017. In the case of Respondent, it was observed that the schedule of payment of a homebuyer was directly linked with the construction of the project. Further, Section 171 envisaged that any additional benefit accrued to him on account of GST implementation was to be passed on to the eligible buyers against the payment made. ITC benefit, if any, has to be passed on to each customer. Therefore, comparing ITC to Turnover ratio in pre-GST & post-GST period was correct in terms of Section 171.



xi. The Respondent also contended that the investigation could not go beyond the application submitted by the Applicant. In this regard, reference was made to Section 171 (1) of the CGST Act, 2017 itself which stated that *"Any reduction in rate of tax on any supply of goods or services or the benefit of ITC shall be passed on to the recipient by way of commensurate reduction in prices."* Thus, the legal requirement was abundantly clear that in the event of a benefit of ITC or reduction in rate of tax, there must be a commensurate reduction in prices of any supply of goods or services. It may be noted that Rule 129 (2) authorized the DGAP to conduct investigation on any supply of goods or services. Similarly, Section 171 (2), empowered the Authority to examine whether the ITC availed or reduction in tax rate had actually resulted in commensurate reduction in the prices of the goods or services or both supplied by him. Hence, the investigation was not limited to complained product/service only and was being done for all the impacted goods/ services.

Therefore, law prescribed that benefit of reduction in rate of tax or benefit of increase in ITC should result in commensurate reduction in prices of any supply and accordingly, the DGAP was justified in examining all the supplies made by the Respondent beyond the application filed by the Applicant No. 1. As regards contention that the unit of the Applicant was cancelled, it was submitted that profiteering calculation against the Applicant No. 1 unit had not been computed.

xii. The contention of the Respondent that absence of any prescribed method/formula for calculation of profiteering and following a method on case-to-case was arbitrary and thus, the investigation

was liable to be set aside was incorrect. In this regard, it was submitted by the DGAP that the "Methodology and Procedure" had been notified by the Authority vide his Notification dated 28.03.2018 under Rule 126 of the CGST Rules, 2017. The main contours of the "*Procedure and Methodology*" for passing on the benefits of reduction in the rate of tax and the benefit of ITC was enshrined in Section 171 (1) of the CGST Act, 2017 itself which stated that "*Any reduction in rate of tax on any supply of goods or services or the benefit of ITC shall be passed on to the recipient by way of commensurate reduction in prices.*" It was clear from the perusal of the above provision that it mentioned "*reduction in the rate of tax on any supply of good or services*" which did not mean that the reduction in the rate of tax was not required to be passed on to each recipient. Further, the above section mention "*any supply*" i.e. each taxable supply made to each recipient was entitled to receive the benefit of tax reduction on each invoice raised to him. The word "*commensurate*" mentioned in the above Section gives the extent of benefit to be passed on by way of reduction in the prices which have to be computed in respect of each supply based on the benefit of ITC as well as the existing base price (price without GST) of the supply. To give further clarifications and to elaborate upon the legislative intent behind the law, the Authority has been empowered to determine/expand the procedure and methodology in detail. However, one formula which fits all cannot be set while determining such a "Methodology and Procedure" as the facts of each case were different. In one real estate project, date of start and completion of the project, price of the house/commercial unit, mode of payment of price, stage of

completion of the project, timing of purchase of inputs, rates of taxes, amount of ITC availed, total saleable area, area sold and the taxable turnover realized before and after the GST implementation would always be different than the other project and hence the amount of benefit of additional ITC to be passed on in respect of one project would not be similar to another project. Issuance of Occupancy Certificate/Completion Certificate would also affect the amount of benefit of ITC. Therefore, no set parameters could be fixed for determining methodology to compute the benefit of additional ITC which would be required to be passed on to the buyers of such units.

Further, the facts of the cases relating to the Fast-Moving Consumer Goods (FMCGs), restaurants, construction and cinema houses was completely different and therefore, the mathematical methodology employed in the case of one sector cannot be applied in the other sector otherwise it would result in denial of the benefit to the eligible recipients. Further, applying the same mathematical methodology of FMCG Sector to a supplier of a cinema sector would in fact lead to erosion of justice in the name of uniformity.

- xiii. As regards the allegation of profiteering, it was observed by the DGAP that prior to 01.07.2017, i.e., before the GST was introduced, the Respondent was eligible to avail credit of Service Tax paid on the input services (CENVAT credit of Central Excise duty was not available) in respect of the units for the Project "Eldeco County" sold by him. Moreover, the Respondent was paying VAT under Uttar Pradesh VAT Scheme, wherein his were required to discharge his output VAT liability on deemed 10%

value addition to the purchase value of the inputs and the Respondent was not charging such VAT from the home buyers. Therefore, there was no direct relation between the turnover reported in the VAT returns for the period April, 2016 to June, 2017, filed by the Respondent and the actual consideration collected by him from the home buyers. Further, post-GST, the Respondent could avail ITC of GST paid on all the inputs and input services. From the data submitted by the Respondent covering the period April, 2016 to March, 2019, the details of the ITC availed by them, his turnovers from the Project "Eldeco County", the ratios of ITCs to turnovers, during the pre-GST (April, 2016 to June, 2017) and post-GST (July, 2017 to March, 2019) periods, has been furnished in Table-A below:-

**Table-A**

Sr.No	Particulars	Total (Pre- GST) April, 2016 to June,2017	Total (Post-GST) July, 2017 to March, 2019
1	CENVAT of Service Tax Paid on Input Services used for flats (A)	12,50,508	-
2	Input Tax Credit of VAT Paid on Purchase of Inputs (B)		-
3	Total CENVAT/ITC Available (C)= (A+B)	12,50,508	-
4	ITC of GST Availed (D)	-	43,95,908
5	Turnover for Flats as per Home Buyers List (E)	2,22,86,469	2,51,28,110
6	Total Saleable Area (in SQF) (F)	2,20,617	2,20,617
7	Total Sold Area (in SQF) relevant to turnover (G)	17,312	21,138
8	Relevant ITC [(H)= (C)*(G) / (F)] or (D)*(G)/ (F)]	98,128	4,21,186
	Ratio of ITC Post-GST [(I)=(H)/(E)]	0.44%	1.68%

- xiv. From the Table- 'A' above, it was clear 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 0.44% and during the post-GST period (July, 2017 to March, 2019), it was 1.68% in Project "Eldeco county". This clearly confirms that post-GST, the Respondent had benefited from additional ITC to the tune of 1.24% [1.68% (-) 0.44%] of the turnover. Though the investigation period was July, 2017 to September, 2020 the period upto March, 2019 instead of September, 2020 had been considered for computation of the profiteering because the Respondent opted for new scheme issued vide Notification 03/2019-Central Tax (Rate) dated 29.03.2019. In terms of this Notification the Respondent was required to pay GST @ 5% without taking/ availing the benefit of Input Tax Credit. Thus, the Respondent was not eligible to avail the ITC w.e.f. 01.04.2019. Since, there was no benefit of ITC to the Respondent w.e.f. 01.04.2019 profiteering on account of additional ITC benefit cannot be attributed after 01.04.2019.
- xv. The Respondent stated that the prices quoted to the two post GST customers were inclusive of the benefit of ITC under GST Laws. The final allotment certificate and agreement mentioned that "Basic cost after input credit discount". In order to examine this aspect, the final allotment certificate and agreement in respect of two buyers who had booked flats in the post GST period were required to be scrutinized. However, on scrutiny it was observed that the Respondent had submitted the final allotment certificate and agreement in respect of 2 home buyers only. Every page of the final allotment certificate and agreement was signed by these 2 home buyers. On Scrutiny of the final allotment certificate and agreement

in respect of 2 buyers, it was revealed that these documents were typed but the clause with respect to passing of benefit of ITC was written by hand. Thus, the benefit claimed to have been cannot be accepted when such important clause was inserted by writing. Hence, in these 2 cases also, the claim of the Respondent could not be accepted.

- xvi. The Central Government, on the recommendation of the GST Council, had levied 18% GST (effective rate was 12% in view of 1/3rd abatement for land value) on construction service, vide Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017. The effective GST rate was 12% for flats. Accordingly, on the basis of the figures contained in Table- 'A' above, the comparative figures of the ratio of ITC availed/ available to the turnover in the pre-GST and post-GST periods as well as the turnover, the recalibrated base price and the excess realization (profiteering) during the post- GST period, was tabulated in Table-B below.

**Table – 'B'**

(Amount in Rs.)

Sr. No.	Particulars		
1	Period	A	July, 2017 to March, 2019
2	Output GST rate(%)	B	12
3	Ratio of CENVAT credit/ ITC to Total Turnover as per Table – 'A' above (%)	C	1.68% / 0.44%
4	Increase in ITC availed post-GST (%)	D= 1.68% less 0.44%	1.24%
5	<b>Analysis of Increase in ITC:</b>		
6	Base Price raised during July, 2017 to March,2019 (Rs.)	E	2,51,28,110
7	GST raised over Base Price (Rs.)	F=E*B	30,15,373
8	Total Demand raised	G=E+F	2,81,43,483

9	Recalibrated Base Price	$H = E * (1 - D)$ or 98.76% of E	2,48,16,521
10	GST@12%	$I = H * B$	29,77,983
11	Commensurate demand price	$J = H + I$	2,77,94,504
12	<b>Excess Collection of Demand or Profiteering Amount</b>	$K = G - J$	<b>3,48,979</b>

- xvii. From the Table- 'B' above, it was clear that the additional ITC of 1.24% of the turnover should have resulted in the commensurate reduction in the base price as well as cum-tax price. Therefore, in terms of Section 171 of the CGST Act, 2017, the benefit of such additional ITC was required to be passed on to the recipients.
- xviii. It was evident from the above calculation explained in Table-'B' on the basis of the aforesaid CENVAT/ITC availability pre and post-GST and the details of the amount collected by the Respondent from the Applicants in respect of the flats sold by the Respondent during the period 01.07.2017 to 31.03.2019, the benefit of ITC that needed to be passed on by the Respondent to the buyers of flats came to Rs. 3,48,979 /- which included 12% GST on the base-amount of Rs. 3,11,589/-. The flat homebuyer and unit no. wise break-up of this amount was given in Annexure-11 of the Report. The allotment of the Applicant No. 1 unit was cancelled due to non-payment of milestone payment. Accordingly, no benefit of ITC had been computed with respect to the Applicant No. 1. There were altogether 117 units in the project "*Eldeco County*". Out of 117 units entire consideration of 101 units was received in pre-GST era. Hence, profiteering of 101 units was out of scope of this investigation. Out of remaining 16 units, the Respondent received

consideration amount from 01.07.2017 upto 31.03.2019 with respect to 11 units only. As regards the verification of ITC benefit claimed to have been passed on to his homebuyers by the Respondent, it was observed that the Respondent had submitted the soft copies of acknowledgment from only three homebuyers with respect to receipt of benefit of ITC passed on to them. In order to cross check the claim of the Respondent, e-mails were sent to the 3 buyers. All the 3 buyers had confirmed the receipt of payment made by the Respondent. A summary of benefit of ITC required to be passed on and the ITC benefit claimed to have been passed on to home buyers as Table-'C' below:-

**Table-'C' (Amount in Rs.)**

Sr. No.	Category of Customers	No.of Units	Area (in Sqf)	Amount Received Post GST	Profiteering Amt. as per Annex-11	Benefit passed on by the Respondent	Difference	Remark
A	B	C	D	E	F	G	H-F-G	I
1	Confirmation Buyers	3	5,727	40,64,402	56,447	3,04,088	-2,47,641	Excess benefit passed on. List attached as Annex-11 of the Report.
2	Other Buyers	8	15,411	2,10,63,708	2,92,532	0	2,92,532	Benefit to be passed on. List attached as Annex- 12 of the Report.
Total		11	21,138	2,51,28,110	3,48,979	3,04,088		

xix. From the above Table-"C", it was observed that the benefit claimed to have been passed on by the Respondent was higher than the commensurate benefit, in respect of 3 Home buyers (Sr. 1 of above



Table-C) by an amount of Rs. 2,47,641/- and that no benefit has been passed on by the Respondent to 8 Home buyers (Sr. 2 of above Table-C) by an amount of Rs. 2,92,532/-. However, this excess benefit claimed to have been passed on to some recipients, could not be offset against the additional benefit required to be passed on to other home buyers who did not receive the commensurate benefit as each recipient/home buyer was entitled to commensurate benefit. The excess amount paid to any recipient could only be adjusted against any future benefit that might accrue to such recipients.

xx. On the basis of the details of outward supplies of the construction service submitted by the Respondent, it was observed that the service had been supplied in the State of Uttar Pradesh only.

3. Therefore, the DGAP has concluded that:-

i. The benefit of additional ITC to the tune of 1.24% of the turnover, has accrued to the Respondent post-GST and the same was required to be passed on by the Respondent to his recipients. Section 171 of the CGST Act, 2017 appeared to have been contravened by the Respondent, inasmuch as the additional benefit of Input Tax Credit @1.24% of the base price received by the Respondent during the period 01.07.2017 to 31.03.2019, has not been passed on by the Respondent to the 11 recipients. On this account, it appeared that the Respondent had realized an additional amount to the tune of Rs. 3,48,979/- (including GST). It also appeared that the Respondent had passed on the ITC benefit of Rs. 3,04,088/- to 3 homebuyers as mentioned in above Table-C. Further, from the above it was also observed that the Respondent was yet to pass on an additional

amount of Rs 2,92,532/- as mentioned at Sr. No.2 of the Table-C which included both the profiteered amount @1.24% of the base price and GST on the said profiteered amount from the 8 Home buyers. These 11 recipients were identifiable as per the documents provided by the Respondent, giving the names along with unit no. allotted to such recipients. As observed earlier, the Respondent had supplied construction services in the State of Uttar Pradesh only.

- ii. As aforementioned, the present investigation covered the period from 01.07.2017 to 31.03.2019. Profiteering, if any, for the period post March, 2019, had not been examined as the Respondent opted for a new scheme issued vide Notification No. 03/2019-Central Tax (Rate) dated 29.03.2019. In terms of this Notification the Respondent was required to pay Tax/GST @ 5% without taking/availing the benefit of Input Tax Credit. Thus, the Respondent was not eligible to avail the input tax credit w.e.f. 01.04.2019 and Section 171 of CGST Act, 2017 was not attracted.
4. The above Report was carefully considered by this Authority and the Respondent was directed to file his consolidated written submissions. A notice dated 17.06.2021 was issued to the Respondent to explain why the Report dated 31.03.2021 furnished by the DGAP should not be accepted and his liability for profiteering in violation of the provisions of Section 171 should not be fixed.
  5. The Respondent filed his written submissions vide letter dated 08.07.2021, 17.07.2021 and 30.03.2022 in which he has, inter-alia, submitted:-

- i. That while Section 171 prescribed for passing on the benefit of ITC by way of commensurate reduction in prices, there is no methodology prescribed to measure the benefits.
  - ii. That, to buy peace of mind and to conduct his business smoothly, he had decided to pass on the benefit computed by the DGAP to eligible customers.
  - iii. That he had issued and distributed cheques of Rs. 2,92,532/-, profiteering, as computed by the DGAP in his Report, to respective customers. Copies of cheques, communication to customers and proof of receipt of cheque by customers have been attached with the submissions.
  - iv. That these submissions were made without prejudice to his submissions that there was no profiteering, and this must be considered as admission of profiteering on his part.
6. Copy of the submissions dated 30.03.2022 filed by the Respondent was supplied to the DGAP for clarifications under Rule 133(2A) of the CGST Rules, 2017. The DGAP filed his clarifications dated 11.05.2022 vide which it was clarified that the details of bank account statement for the period of 05.07.2021 to 25.08.2021 in respect of the Respondent submissions vide e-mails dated 21.04.2022 and 27.04.2022 have been examined. The list of 8 customers showing the details of payment of profiteering amount were verified as given in bank account statement of the Respondent and it was observed that the entry of profiteered amount match with each other in respect of 8 customers. Therefore, it appeared that the Respondent has passed on the profiteering amount in respect of 8 customers of Rs. 2,92,532/- as mentioned in Report dated 31.03.2021.

7. In this matter, the Respondent and the Applicant No. 1 were given opportunity for personal hearing on 16.06.2022. The hearing was held on 16.06.2022 via video conferencing. It was attended by Sh. Shivendu Pandey, Superintendent, on behalf of the Applicant No. 2 and Sh. Gagan Gugnani, C.A., appeared for the Respondent. During the hearing, the Respondent has reiterated his earlier submissions dated 17.07.2021 and 30.03.2022.
8. This Authority has carefully considered the Report furnished by the DGAP, all the submissions and the other material placed on record, and the arguments advanced by the Respondent. The Authority has examined the DGAP's Report dated 31.03.2021 and the annexures thereof.
9. Section 171 of the CGST Act, 2017 provides that any reduction in the rate of tax on any supply of goods or services or benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices. In the instant case, there is no reduction of rate of tax during the relevant period and the only issue which is required to be decided by the Authority is whether Respondent is required to pass on the benefit of input tax credit. As mentioned in earlier paragraphs, DGAP has carried out investigation in the subject matter and collected relevant information/evidences from the Respondent and after the analysis of the same the DGAP has come to a conclusion that the Respondent has gained benefit of ITC on the supply of construction services after the implementation of GST w.e.f. 01.07.2017 and the Respondent was required to pass on such benefit to the homebuyers/customers by way of commensurate reduction in prices in terms of Section 171 of the CGST Act, 2017 during the period 01.07.2017 to 31.03.2019. The DGAP has

calculated that an amount of benefit of ITC not passed on to the recipients or in other words, the profiteered amount comes to Rs. 3,48,979/-. During the course of investigation, the DGAP has called for several documents from the Respondent and based on the documents so received, the above said Report has been prepared by concluding that the Respondent has profiteering amount to the tune of Rs. 3,48,979/- and the same needed to be allocated amongst 11 buyers. The Authority finds that the Project "Eldeco County" at Jhansi has 117 flats and it is reported that out of these 117 units, consideration for 101 units was received in the pre-GST era.

10. The Respondent has contended that while Section 171 prescribed for passing on the benefit of ITC by way of commensurate reduction in prices, there is no methodology prescribed to measure the benefits. However, he has decided to pass on the benefit computed by the DGAP to the eligible customers and that he has issued and distributed cheques of Rs. 2,92,532/- as computed by the DGAP in his Report to respective customers. In this regard the Authority finds that it is clear from the plain reading of the Section 171 (1) of the CGST Act, 2017 that it mentions "reduction in the rate of tax or benefit of ITC" which means that if any reduction in the rate of tax is ordered by the Central and the State Governments or a registered supplier avails benefit of additional ITC post GST implementation, the same have to be passed on by him to his recipients since both the above benefits are being given by the above Governments out of their scarce and precious tax revenue. Computation of the profiteered amount is a mathematical exercise which can be done by any person who has elementary knowledge of accounts and mathematics as per the Explanation attached to Section 171. However, to further explain the legislative intent behind the above provision, this

Authority has been authorised to determine the 'Procedure and Methodology' which has been done by it vide its Notification dated 28.03.2018 under Rule 126 of the CGST Rules, 2017. However, no fixed mathematical formula, in respect of all the Sectors or the products or the services, can be set for passing on the above benefits or for computation of the profiteered amount, as the facts of each case are different. In the case of one real estate project, date of start and completion of the project, price of the flat/shop, mode of payment of price or instalments, stage of completion of the project, rates of taxes pre and post GST implementation, amount of CENVAT credit and ITC available, total saleable area, area sold and the taxable turnover received before and after the GST implementation would always be different from the other project and hence the amount of benefit of additional ITC to be passed on in respect of one project would not be similar to the other project. Therefore, no set procedure or mathematical methodology can be framed for determining the benefit of additional ITC which has to be passed on to the buyers of the units. Moreover, this Authority under Rule 126 has been empowered to 'determine' Methodology & Procedure and not to 'prescribe' it. Moreover, both the above benefits are being given by the Central as well as the State Governments as a special concession out of their tax revenue in the public interest and hence the suppliers are not required to pay even a single penny from their own pocket and therefore, they are bound to pass on the above benefits as per the provisions of Section 171 (1) which are abundantly clear, unambiguous, mandatory and legally enforceable. The above provisions also reflect that the true intent behind the above provisions, made by the Central and the State legislatures in their respective GST Acts, is to pass on the above benefits to the common buyers who bear the burden of tax and who are

unorganised, voiceless and vulnerable. It is abundantly clear from the above narration of the facts and the law that no elaborate mathematical calculations are required to be prescribed separately for passing on the benefit of tax reduction and computation of the profiteered amount. The Respondent cannot deny the benefit of tax reduction to his customers on the above ground and enrich himself at the expense of his buyers as Section 171 provides clear cut methodology and procedure to compute the benefit of tax reduction and the profiteered amount. Therefore, the Authority finds that the above contention of the Respondent cannot be accepted.

11. For the reasons discussed hereinabove, the Authority does not find any merits in the prayers/contentions made by the Respondent and therefore concurs with the conclusions drawn by the DGAP in its report dated 31.03.2021 and the Authority finds that the benefit of additional Input Tax Credit of 1.24 % of the turnover has accrued to the Respondent for the project "Eldeco County". This benefit was required to be passed on to the recipients. Thus, Section 171 of the CGST, 2017 has been contravened by the Respondent, in as much as the additional benefit of ITC @1.24 % of the base price received by the Respondent during the period 01.07.2017 to 31.03.2019, was required to be passed on to the recipients. These recipients are identifiable as per the documents provided by the Respondent, giving the names and addresses along with Unit no. allotted to such recipients. The Respondent claimed that he had already passed on a substantial amount of GST ITC per the requirements of Section 171 of the CGST Act, 2017 to the homebuyers/customers. The Respondent had submitted that he had passed on the benefit of Rs. 3,48,979/- to 11 homebuyers/customers. The details of such

homebuyers/customers and the amount of the benefit to be passed on is enclosed in the **Annexure-A** to this order.

12. From the above discussions, the Authority determines that the Respondent has profiteered an amount of Rs. 3,48,979/-. Therefore, given the above facts, the Authority under Rule 133(3)(a) of the CGST Rules orders that the Respondent shall reduce the price to be realized from the buyers of the flats/customers commensurate with the benefit of ITC received by him. The details of the recipients and benefit which is required to be passed on to each recipient/homebuyer/customer alongwith the details of the unit are contained in the Annexure-'A' to this order. The Authority directs that such profiteered amount as determined shall be passed on/returned by the Respondent to the recipients of supply, if not already passed on, alongwith interest @18% (as prescribed under Rule 133(3)(b) of the CGST Rules, 2017 from the date such amount was profiteered by the Respondent up till the date such amount is passed on/returned to the respective recipient of supply) within a period of three months of the date of receipt of this Order, if not already passed on.
13. For the reasons mentioned hereinabove and in the given facts and circumstances and also stated position of law this Authority finds that the Respondent has denied the benefit of ITC to the buyers of his flats/customers in contravention of the provisions of Section 171 (1) of the CGST Act, 2017. The Authority holds that the Respondent has committed an offence by violating the provisions of Section 171 (1) during the period from 01.07.2017 to 31.3.2019, and therefore, he is liable for imposition of penalty under the provisions of Section 171 (3A) of the above Act. However, perusal of the provisions of the said Section



171 (3A) shows that it has been inserted in the CGST Act, 2017 w.e.f. 01.01.2020 vide Section 112 of the Finance Act, 2019 and it was not in operation during the period from 01.07.2017 to 31.03.2019 when the Respondent had committed the above violation. Hence, the said penalty under Section 171 (3A) cannot be imposed on the Respondent retrospectively.

14. The concerned jurisdictional CGST/SGST Commissioner is also directed to ensure compliance of this Order. It may be ensured that the benefit of ITC as determined by the Authority as per the **Annexure 'A'** of this Order be passed on along with interest @18%, as prescribed, to each homebuyer/customer, if not already passed on. In this regard an advertisement may also be published in a minimum of two local Newspapers/vernacular press in Hindi/English/local language with the details i.e. M/s Eldeco County Limited and amount of profiteering Rs. 3,48,979/- so that the homebuyers/customers can claim the benefit of ITC which has not been passed on to them. Homebuyers/customers may also be informed that the detailed NAA Order is available on Authority's website [www.naa.gov.in](http://www.naa.gov.in). Contact details of concerned Jurisdictional Commissioner CGST/SGST for compliance of this Authority's order may also be advertised through the said advertisement.
15. Further, this Authority as per Rule 136 of the CGST Rules 2017 directs the concerned jurisdictional CGST/SGST Commissioner shall also submit a Report regarding the compliance of this order to the Authority and the DGAP within a period of 4 months from the date

of this order.

16. Further, the Hon'ble Supreme Court, vide its Order dated 23.03.2020, Suo Moto Writ Petition (C) No. 03/2020 while taking suo-moto cognizance of the situation arising on account of the Covid-19 pandemic, has extended the period of limitation prescribed under the general law of limitation or any other special laws (both Central and State) including those prescribed under Rule 133(1) of the CGST Rules, 2017, as is clear from the said Order which states as follows:-

“A period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or special laws whether condonable or not shall stand extended w.e.f. 15th March 2020 till further order/s to be passed by this Court in present proceedings.”

Further, the Hon'ble Supreme Court, vide its subsequent Order dated 10.01.2022 has extended the period(s) of limitation till 28.02.2022 and the relevant portion of the said Order is as follows:-

“The Order dated 23.03.2020 is restored and in continuation of the subsequent Orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.”

Accordingly, this Order having been passed today falls within the limitation prescribed under Rule 133(1) of the CGST Rules, 2017.

17. A copy each of this Order be supplied free of cost to the Applicants, the Respondent, Commissioners CGST/SGST Uttar Pradesh and the Principal Secretary (Town and Country Planning), Government of Uttar Pradesh and Uttar Pradesh RERA for necessary action. File be consigned after completion.

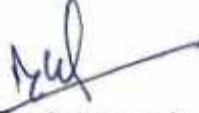
**Encls: Annexure A List of buyers/customers with details of determined profiteered amount (1 page)**

Sd/-  
(Amand Shah)  
Technical Member &  
Chairman

Sd/-  
(Pramod Kumar Singh)  
Technical Member

Sd/-  
(Hitesh Shah)  
Technical Member


Certified Copy

  
(Dinesh Meena)  
Secretary, NAA



F. No. 22011/NAA/03/Eldeco/2021-22 | 7724 - 774 | Date: 26.07.2022  
Copy To:-

1. M/s Eldeco County Ltd., FF, Virendra Smriti Complex, 15/54-B, Civil Lines, Kanpur-208001.
2. Sh. Ajay Sood, 91, Cantt, Jhansi-284001.
3. Commissioner, GST, 7-A, Ashok Marg, Lucknow - 226 001.
4. Office of the Commissioner, Commercial Tax, U.P. Commercial Tax Head Office Vibhuti Khand, Gomti Nagar, Lucknow (U.P)

5. Principal Secretary (RERA), Uttar Pradesh, Naveen Bhavan, Rajya Niyojan Sansthan, Kala Kankar House, Old Hyderabad, Lucknow – 226007.
6. Principal Secretary (Town and Country Planning), Uttar Pradesh, TCG / 1-A-V/5, Vibhuti Khand, Gomti Nagar, Lucknow-226010
7. Director General Anti-Profitteering, Central Board of Indirect Taxes & Customs, 2<sup>nd</sup> Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001. 
8. Guard File.

**ANNEXURE-A****LIST OF HOME BUYERS OF THE PROJECT 'ELDECO COUNTY'**

S. No.	Customer Name	Unit Number	Amount of ITC to be passed on (in Rs.)
1	Smt. Rekha Gupta	Saph-38	2,593
2	Smt. Meenu Gupta	Saph-14	2,500
3	Mr. Shuham Rusia	Cor-4	9,613
4	Mr. Rahul Sarwaria	Cor-5	15,519
5	Arjun Singh	Saph-04	16,666
6	Bedri Parsad	Saph-05	51,088
7	Akhileshwar Kumar	Saph-06	19,822
8	Prabha Pandey	Top-01	34,842
9	Ghun Shyam & Archana Maurya	Saph-03	19,959
10	Pardeep Singh Yadav	A-02	76,384
11	Kanchan	J-02	99,994
<b>Total</b>			<b>3,48,979</b>

