

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

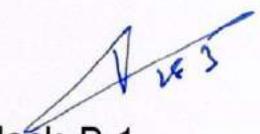
**Case No.** : 21/2019  
**Date of Institution** : 03.01.2019  
**Date of Order** : 28.03. 2019

**In the matter of:**

1. Mr. Vivek Gupta, S/o Shri Kishan ji and (2) Mrs. Disha Gupta, W/o Mr. Vivek Gupta, Flat No. 834, Anand Kunj Society, Near Gujranwala Society, Vikaspuri, New Delhi-110018.
  
3. 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 Gurukripa Developers & Infrastructures Pvt. Ltd., 3, Block B-1,  
Raja Ram Kumar Plaza, 75, Hazratganj, Lucknow, Uttar Pradesh.

Respondent

Quorum:-

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

Present:-

1. Mr. Vivek Gupta, Applicant No. 1 on his own behalf and on behalf of Applicant No. 2.
2. Sh. Rana Ashok Rajneesh, Assistant Commissioner for the Applicant No. 3.
3. Sh. Satpal Singh, Director for the Respondent.

**ORDER**

1. This Report dated 28.11.2018, has been received from the Director General of Anti-Profiteering (DGAP) under Rule 129 (6) of the Central Goods and Service Tax (CGST) Rules, 2017. The brief facts of the present case are that the Uttar Pradesh State Screening Committee on Anti-profiteering, vide the minutes of its meeting held on 25.04.2018 had forwarded an application dated 04.01.2018 filed by

the Applicant No. 1 and 2 (here-in-after referred to as the Applicants) to the Standing Committee on Anti-profiteering, under Rule 128 of the CGST Rules, 2017. The Applicants had stated in their complaint that the Respondent had resorted to profiteering in respect of the purchase of Flat No. A701, constructed by the Respondent in his "Vrindavan Yojna Project", Rae Bareli Road, Lucknow. The Applicants had further alleged that the Respondent had increased the price of the flat after implementation of the Goods & Service Tax (GST) w.e.f. 01.07.2017 and had not passed on the benefit of Input Tax Credit (ITC) by way of commensurate reduction in the price of the flat purchased by them. They had also claimed that the Respondent had committed contravention of the provisions of Section 171 of the CGST Act, 2017 and hence appropriate action should be taken against him.

2. The Standing Committee vide the minutes of its meetings dated 07.08.2018 & 08.08.2018 had requested the DGAP to initiate investigation under Rule 129 (1) of the CGST Rules, 2017 and collect evidence necessary to determine whether the benefits of reduction in the rate of tax or ITC had been passed on by the Respondent to his recipients or not?
3. After examination of the application filed by the Applicants, the DGAP had found that the Applicants had booked a flat with the Respondent on 01.05.2017, before coming into force of the GST. He has also given the following schedule of demands raised by the Respondent on booking of the flat by the Applicants as per the Table-A below:-

**Table-A**

(Amount in Rs.)

Particulars	BSP	Service Tax	GST@12 %	GST Benefit passed on	Total
Agreement Value (A)	59,14,590	2,66,157	-	-	61,80,747
Paid in Pre-GST era (B)	95,694	4,306	-	-	1,00,000
Balance to be paid Post GST (C)= (A)-(B)	58,18,896	2,61,850	-	-	60,80,747
Demanded by the noticee (D)	58,18,896	-	6,98,268	1,60,020	63,57,144
Excess Demand: (E)= (D)-(C)					<b>2,76,397</b>

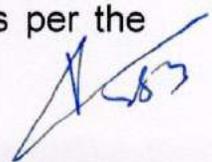
4. The DGAP had also found that that the Applicants had bought the flat from the Respondent for Rs. 61,80,747/- including Service Tax @4.5% before coming into force of the GST and after its implementation the Respondent had increased the price of the flat by Rs. 4,48,030/- by charging GST@12% on the total payment. He had further found that the Respondent had not passed on the benefit of ITC availed by him. He had also noticed that 85% to 90% of the construction had been completed at the time of booking of the flat.
5. The DGAP had issued Notice under Rule 129 of the CGST Rules, 2017 on 10.09.2018 to the Respondent asking him to file reply on the allegations levelled against him and also to explain whether he had committed violation of the provisions of Section 171 of the CGST Act, 2017 by not passing on the benefit of ITC to the Applicants by way of

commensurate reduction in the price of the flat. The Respondent was also asked to suo moto determine the quantum of profiteering, if any, and reflect the same in his reply to the Notice. The Respondent and the Applicants were given opportunity by the DGAP to inspect the non-confidential evidence/information which they had availed on 23.10.2018 and 26.11.2018 respectively and inspected the record. The DGAP has also intimated that the present investigation has been carried out from 01.07.2017 to 31.08.2018.

6. The Respondent had submitted replies to the notice issued by the DGAP vide his letters dated 21.09.2018, 01.10.2018, 09.10.2018, 23.10.2018, 15.11.2018 and 19.11.2018 and stated that the Applicants had booked the flat on 01.05.2017 by paying Rs. 1,00,000/- including the Service Tax and provisional allotment was made to them vide letter dated 20.05.2017 and the agreement to sell was executed on 22.05.2017. The DGAP has also intimated that the Respondent had further stated that meanwhile, the GST had come in to force w.e.f. 01.07.2017 and the flat was almost complete and hence as per the agreement dated 22.05.2017, the Applicants were asked to pay Rs. 59,14,590 plus taxes as per the following schedule:-

- i. Amount on booking- Rs. 1,00,000/- including Service Tax @ 4.5%.
- ii. Within 60 days from booking- Rs. 52,27,437/- plus Service Tax/GST.
- iii. On offer of possession- Rs. 5,91,459/- plus GST.

The Respondent had also submitted that the Applicants had deposited an amount of Rs. 50,40,000/- including 12% GST and were verbally informed that since the building was almost complete the Respondent would not be eligible to avail full benefit of ITC but whatever ITC he would be availing the benefit of the same would be transferred to the allottees, in proportion to the amount outstanding as on 01.07.2017. The Respondent had further submitted that the completion certificate was issued on 06.08.2018 and during the months of August and September, 2018, the Applicants were intimated that the flat was ready for possession and as per his calculation, 2.75% of the amount outstanding from the Applicants as on 01.07.2017, shall be adjusted/paid as ITC benefit to them. The DGAP has further intimated that the Respondent had also claimed that at the time of issue of completion certificate, 9,694.60 sq.mt. area which amounted to about 56% of the total built up area had not been sold and as per para 5 (b) of the Schedule II of the CGST Act, 2017, the flats sold after issue of completion certificate were not leviable to GST and hence the ITC availed on them would have to be reversed as per the provisions of Section 17 (2) of the CGST Act, 2017 and accordingly, the Respondent had reversed an amount of Rs. 46,25,295/- in the GSTR-3B return filed for the month of August, 2018. The DGAP has also supplied the following computation of the ITC, the benefit of which was required to be passed on to the buyers of the flats, as had been calculated by the Respondent, as per the Table-B given below:-



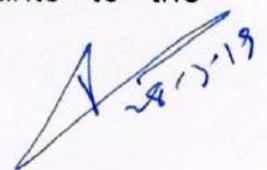
**Table-B**

<b>Particulars</b>	<b>Factor</b>	<b>Amount (Rs.)</b>
Total Built up area of Flats to be sold	A	17300.88 sq. mtrs.
Area booked before completion certificate is obtained	B	7606.28 sq. mtrs.
% Area sold before completion certificate is obtained	C	44% (approx.)
Total agreement value before completion certificate is obtained (in Rs.)	D	<b>30,51,51,968.00</b>
Amount received upto 30.06.2017 out of D	E	<b>19,06,89,160.00</b>
Amount yet to be received in respect of agreements made before 30.06.2017	F=D-E	<b>11,44,62,808.00</b>
ITC available for the period between July, 2017 to July, 2018		<b>72,40,064.00</b>
44% of the ITC amount		<b>31,85,628.00</b>
% of ITC available for distribution (31,85,628/11,44,62,808)*100		<b>2.75%</b>

7. The DGAP has also informed that the Respondent had also submitted copies of the GSTR-1 returns for July, 2017 to August, 2018, GSTR-3B returns for July, 2017 to August, 2018, TRAN-1 returns for the transitional credit availed, VAT & ST-3 returns for April, 2016 to June, 2017, all demand letters, payment receipts, booking form & agreement to sell issued to the Applicants, tax rates - pre-GST and post-GST, Balance Sheet for the FY 2016-17 & FY 2017-18,

Electronic Credit Ledger for 01.07.2017 to 14.11.2018, CENVAT/Input Tax Credit register for April, 2016 to June, 2017, Project Completion Certificate along with working of proportionate ITC reversed on unsold units, details of turnover, output liability, GST payable and the ITC availed, list of home buyers in the project "Vrindavan Yojna" and communication to all the customers about passing on of the GST benefit along with cheques of benefit passed on.

8. The DGAP has further informed that the main issue for determination in the present case was whether there was reduction in the rate of tax or the benefit of ITC was available to the Respondent on the supply of construction service after implementation of the GST w.e.f. 01.07.2017 and if so, whether any benefit was required to be passed on to the recipients by him in terms of Section 171 of the CGST Act, 2017.
9. The DGAP has also submitted that the Respondent vide his replies dated 01.10.2018 & 10.10.2018 had supplied copy of the agreement to sell executed by him with the Applicants, agreement form and the demand letters issued by him to the Applicants for the purchase of flat No. A701, measuring 1,762 square feet, at the basic sale price of Rs. 3,357/- per square feet. He has also intimated the details of the amounts and the taxes paid by the above Applicants to the Respondent as per the Table-C given below:-

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**Table-C**

(Amount in Rs.)

S. No.	Payment Stages	Due Date	Basic %	BSP	Other Charges	GST Benefits	Service Tax	GST	Total
1	At the time of Booking	01.05.2017	1.62%	95,694	-	-	4,306		1,00,000
2	Within 60 days of Booking	14.08.2017	76.08%	45,00,000	-	-	-	5,40,000	50,40,000
3	Final Demand	18.08.2018	22.30%	13,18,896	-	(1,60,020)	-	1,58,268	13,17,144
4	Interest Free Maintenance	18.08.2018		-	40,000	-	-	-	40,000
5	Electric Meter & Installation Charges	18.08.2018		-	19500	-	-	3510	23,010
6	One year Maintenance Charges	18.08.2018		-	31716	-	-	5709	37,425
<b>Total</b>			<b>100%</b>	<b>59,14,590</b>	<b>91,216</b>	<b>(1,60,020)</b>	<b>4,306</b>	<b>7,07,487</b>	<b>65,57,579</b>

10. The DGAP has also contended that in this case since the completion certificate had been received by the Respondent on 06.08.2018, neither ITC would accrue to the Respondent nor it could be availed by him after the above date. He has further contended that the exact quantum of ITC availed by the Respondent till the completion of the project was available on record and the same was required to be passed on to the Applicants and the other recipients proportionate to the consideration paid and payable post implementation of the GST. The DGAP has also stated that the Respondent had suo moto admitted that there had been benefit of

ITC available to him and he had passed on the benefit of ITC to the Applicants by issuing Cheque No. 548522 dated 13.11.2018 for an amount of Rs. 1,60,020/- which amounted to 2.75% of the amount outstanding from the above Applicants as on 01.07.2017. The DGAP has further stated that the Respondent had passed on the benefit of ITC to the other flat buyers also at the time of giving possession, @2.75% of their respective outstanding amounts as on the date of implementation of the GST, i.e. 01.07.2017 and on the bookings done between 01.07.2017 to 31.07.2018. However, he has claimed that the accuracy of the benefit had to be determined as per the provisions of Rule 129 (6) of the CGST Rules, 2017 and therefore, the ITC available to the Respondent and the taxable amount received or to be received by him from the Applicants and the other recipients after implementation of the GST was required to be taken into account for determining the quantum of benefit to be passed on.

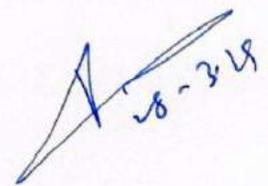
11. The DGAP has also argued that para 5 of Schedule-III of the CGST, 2017, which defined activities or transactions which should be treated neither as a supply of goods nor a supply of services reads as "Sale of land and, subject to clause (b) of para 5 of Schedule II, sale of building" and Clause (b) of para 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 has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation,

whichever is earlier". He has therefore, contended that in view of these provisions, the ITC in respect of the units not sold was required to be reversed in terms of Sections 17 (2) & 17 (3) of the CGST Act, 2017 which read as under:-

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

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

Therefore, the DGAP has further contended that ITC pertaining to the unsold units was required to be reversed the calculation of which he has submitted as per Table-D given below:-

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**Table-D**

<b>Particulars</b>	<b>Factor</b>	<b>Amount</b>
Total Saleable Area of Flats (in sq. mtrs.)	A	17300.88
Area Sold before completion certificate is obtained (in sq. mtrs.)	B	7606.28
Area sold before completion certificate is obtained (in Percentage)	$C=B/A$	43.96%
Area remaining Unsold before completion certificate is obtained (in sq. mtrs.)	$D=A-B$	9,694.60
Area remaining Unsold before completion certificate is obtained (in Percentage)	$E=D/A$	56.04%
ITC available for the period between July, 2017 till Completion Certificate received as per GSTR-3B	F	84,72,530
Proportionate ITC to be reversed (in Rs.)	$G=F*E$	47,47,608
Input Tax Credit Availed post GST pertaining to sold Units	$H=F-G$	<b>37,24,923</b>

The DGAP has also informed that after verification from the GSTR-3B return filed for the month of August, 2018, it was revealed that the Respondent had reversed an amount of Rs. 46,25,295/- of ITC on account of unsold flats.

12. The DGAP has also submitted that prior to 01.07.2017, the Respondent was eligible to avail CENVAT credit of Service Tax paid on input services only and no credit was available to him in respect of the Central Excise Duty paid on the inputs as well as the VAT paid on the inputs and on the VAT (WCT) paid to the sub-contractors. He has further submitted that post-GST, the Respondent was eligible to avail ITC on the GST paid on the inputs and the input services including the sub-contracts. The DGAP has also furnished the details of the ITC

availed by the Respondent and his taxable turnover during the pre and post GST periods as per the Table-E given below:-

**Table-E**

(Amount in Rs.)

S. No.	Particulars	April, 2016 to March, 2017	April, 2017 to June, 2017	Total (Pre-GST)	July, 2017 to August, 2018	Balance BSP Amt. to be Collected as on 31.08.2018	Total (Post-GST)
(1)	(2)	(3)	(4)	(5)=(3)+(4)	(6)	(7)	(8)=(6)+(7)
1	Total CENVAT of Service Tax Available (A)	1,51,232	2,06,231	3,57,463	-	-	-
2	Input Tax Credit of GST Availed as per GST Return (B)	-	-	-	37,24,923	-	37,24,923
3	Total Taxable Turnover as per Returns (C)	8,04,63,461	4,95,43,604	13,00,07,065	-	-	-
4	Total Taxable Turnover Post GST (D)	-	-	-	7,75,23,049	3,49,57,942	11,24,80,991
5	Ratio of CENVAT/ Input Tax Credit to Taxable Turnover [(E)=(A)/(C)] or [(E)=(B)/(D)]			0.27%			3.31%

13. Based on the above computation the DGAP has stated that the ITC as a percentage of the total turnover that was available to the Respondent during the pre-GST period from April, 2016 to June, 2017 was 0.27% and during the post-GST period w.e.f. July, 2017 to August, 2018, it was 3.31% which confirmed that post-GST, the Respondent had benefited from additional ITC to the extent of 3.04%

[3.31%(-) 0.27%] of the total turnover. The DGAP has claimed that the quantum of profiteering has been examined by comparing the applicable tax and the ITC available for the pre-GST period from April, 2016 to June, 2017 when the Service Tax @4.5% was payable, with the post-GST period w.e.f. July, 2017 to August, 2018, when the effective GST rate was 12% (GST @18% along with 1/3rd abatement on value) on the construction service, notified vide Notification No. 11/2017-Central Tax (Rate), dated 28.06.2017. He has further intimated that on the basis of the figures mentioned in Table-E above, the comparative figures of ITC availed/available during the pre-GST period and the post-GST period had been tabulated in the Table-F given below:-

**Table-F**

(Amount in Rs.)

S. No.	Particulars		Pre-GST	Post- GST	Post- GST	Post- GST
1		A	April,2016 to June, 2017	July, 2017 to August, 2018	Balance BSP Amt. to be Collect as on 31.08.2018	Total
2	Output tax rate (%)	B	4.50%		12.00%	
3	Ratio of CENVAT/ Input Tax Credit to Taxable Turnover as per Table - E above (%)	C	0.27%		3.31%	
4	Increase in tax rate post-GST (%)	D= 12% less 4.50%	-		7.50%	
5	Increase in input tax credit availed post-GST (%)	E= 3.31% less 0.27%	-		3.04%	

<b>Analysis of Increase in input tax credit:</b>						
6	Base Price collected or to be collected Post GST	F		775,23,049	349,57,942	1124,80,991
7	GST @ 12% over Basic Price	G= F*12%		93,02,766	41,94,953	134,97,719
8	Total Demand collected or to be collected	H=F+G		868,25,815	391,52,895	1259,78,710
9	Recalibrated Basic Price	I= F*(1-E) or 96.96% of F		751,66,348	338,95,221	1090,61,569
10	GST @12%	J= I*12%		90,19,962	40,67,426	130,87,388
11	Commensurate demand price	K= I+J		841,86,310	379,62,647	1221,48,957
12	Excess Collection of Demand or Profiteering Amount	L= H - K		26,39,505	11,90,248	<b>38,29,753</b>

The DGAP has submitted that from the above table, it was clear that the additional ITC of 3.04% of the amount received and the balance amount as on 31.08.2018, should have resulted in commensurate reduction in the base price as well as cum-tax price and the Respondent in terms of Section 171 of the CGST Act, 2017, was required to pass on the above benefit to the recipients. The DGAP has further submitted that the Respondent had admitted that the benefit would have to be passed on to the recipients and in fact he had already passed on an amount of Rs. 30,73,671/- which had been duly verified from the copies of the cheques issued by the Respondent.

14. The DGAP has also claimed that on the basis of the aforesaid CENVAT/ITC availability pre and post-GST and the details of the amount collected by the Respondent from the Applicants and the other home buyers during the period from 01.07.2017 to 31.08.2018 and the amount outstanding as on 31.08.2018, the amount of benefit of ITC that needed to be passed on by the Respondent to the recipients or the profiteered amount came to Rs. 38,29,753/- which included 12% GST on the base profiteered amount of Rs. 34,19,422/-. This amount was inclusive of Rs. 1,98,122/- including GST on the base amount of Rs. 1,76,894/- which was the profiteered amount in respect of the above Applicants. The DGAP has submitted the details of the home buyers unit no. wise and the profiteered amount along with the amount which is required to be returned to them on account of benefit of ITC as per Annexure-14 attached with his Report.

15. The DGAP has further intimated that the service was supplied in the State of Uttar Pradesh only and the Respondent has suo moto passed on the benefit of ITC in the month of August 2018 and afterwards even prior to issue of Notice on 10.09.2018 by him. He has further intimated that the Respondent has already passed on the benefit of Rs. 30,73,671/- which has been duly verified from the copies of the cheques issued to the above Applicants and the other home buyers and therefore, the Respondent was further required to pass on the benefit of Rs. 7,56,082/- [Rs.38,29,753/- (-) Rs. 30,73,671/-].

16. The DGAP has also contended that the benefit of additional ITC of 3.04% of the taxable turnover available during the period between

01.07.2017 to 31.08.2018 and the amount outstanding as on 31.08.2018, which had accrued to the Respondent was required to be passed on to the Applicants and the other recipients, however, the Respondent had failed to do so and hence, the provisions of Section 171 of the CGST Act, 2017 had been contravened by the Respondent in as much as the additional benefit of ITC @3.04% of the base price received by the Respondent during the period 01.07.2017 to 31.08.2018 and the amount outstanding as on 31.08.2018, has not been passed on to the Applicants and the other recipients. The DGAP has further contended that the Respondent has realized an additional amount of Rs. 1,98,122/- from the Applicants which included both the profiteered amount @3.04% of the taxable amount (base price) and GST on the said profiteered amount. He has also stated that the Respondent has suo moto passed on benefit of ITC of Rs. 1,60,020/- to the Applicants and therefore, the Respondent has profiteered an amount of Rs. 38,102/- [Rs. 1,98,122 – Rs. 1,60,020]. from them. The DGAP has further stated that the Respondent has also profiteered an amount of Rs. 7,17,979/- which included both the profiteered amount @3.04% of the taxable amount (base price) and the GST on the profiteered amount from 64 other recipients who are not applicants in the present proceedings. He has also intimated that all these recipients were identifiable as the Respondent has supplied their names and addresses along with the unit no. allotted to them and hence, the additional amount of Rs. 7,17,979/- was required to be passed on to such eligible flat buyers.

17. The above Report was considered by the Authority in its sitting held on 03.11.2018 and it was decided to hear the Applicants and the Respondent on 19.12.2018.
18. The first hearing was held on 19.12.2018 wherein the Applicants were represented by Shri Vivek Gupta; Applicant No. 3 was represented by Sh. Rana Ashok Rajneesh, Assistant Commissioner and the Respondent was represented by Sh. Satpal Singh, Director.
19. The Respondent has filed written submissions on 20.12.2018 through which he has intimated that the Applicants had offered to purchase flat No. A-701 for total consideration of Rs. 59,14,590/- excluding taxes and had paid advance of Rs. 1,00,000/- on 01.05.2017 which was accepted by the Respondent on the understanding that the basic cost and the taxes as applicable would be charged and an agreement to sell was accordingly signed. He has further stated that at the time of purchase, the building was 85% to 90% complete and on coming in to force of the G.S.T. @12%, with effect from 01.07.2017, the Applicants were informed that the benefit of ITC would be passed on proportionately on the basic amount that would be availed by him on or after 01.07.2017. He has also claimed that the Applicants had liberty of cancelling the allotment and get refund as was done by some other buyers. He has further claimed that the Applicants had paid a sum of Rs. 50,40,000/- including GST on 14.08.2017 which showed that they were liable to pay GST @12%. He has also claimed that he had worked out the quantum of input of GST to be passed on to the flat buyers which came to be

approx 2.75% by the end of June, 2018 and had accordingly intimated all the buyers and assured them that the refund of the additional ITC would be given when the final calculation would be made. He has also submitted that he had no mala fide intention of not passing on the benefit of ITC to the buyers as cheques @ 2.75% of the value were released to them and it was also assured that the balance if any would be paid later on. The Respondent has also contended that the Applicants have not complained against him but against the imposition of GST, due to which the cost of the flat had gone go up and the Applicants would have to pay several lakhs of rupees extra, as the flat purchased by them was 85% to 90% complete and no ITC would be available on the completed portion of the building. He has further contended that the completion certificate was received on 06.08.2018 and from mid-August, the refund process was started @2.75% of the ITC proportionately with an assurance that on finalization of the accounts, the benefit of ITC received would be passed to the buyers. He has also submitted that he had paid Rs. 38102/- vide Cheques No. 548567 dated 14.12.2018 drawn on the Indian Bank through speed post to the Applicants, being the balance amount of benefit of ITC as has been assessed by the DGAP. He has also intimated that all his buyers were fully satisfied and an additional amount of Rs. 7,17,979/- being 0.29% as assessed by the DGAP was also being released through cheques to all the customers.

20. Supplementary Report was sought from the DGAP on the issues raised by the Respondent through his submissions dated 20.12.2018.

The DGAP vide his Report dated 02.01.2019 has intimated that the

issues raised by the Respondent had already been covered in the Investigation Report itself.

21. We have carefully perused the DGAP's Report, the written submissions of the Respondent and all the other material placed on record. The issues to be decided by this Authority in this case are as under:-

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

22. 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."

23. 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 hence, this issue is not relevant in this case. On the issue of passing on the benefit of ITC in the post-GST era, it has been revealed by the DGAP's Report that the benefit of additional

ITC of 3.04% of the taxable turnover during the period w.e.f. 01.07.2017 to 31.08.2018 and the amount outstanding as on 31.08.2018, has accrued to the Respondent and the same was required to be passed on to the Applicants and the other flat buyers. The DGAP has calculated the amount of ITC as Rs. 37,24,923/- which was availed by the Respondent vide Table-D supra on the basis of the information supplied by the Respondent and hence the calculation done by him can be relied upon. He has also computed the ratio of ITC to the taxable turnover which was available to the Respondent before coming in to force of the GST w.e.f. 01.07.2017 as 0.27% and after 01.07.2017 as 3.31% as per Table-E which proves that the Respondent had availed additional ITC of 3.04% (3.31%-0.27%) post implementation of GST. The DGAP has also computed the amount of profiteering as Rs. 38,29,753/- vide Table-F on the basis of the details supplied by the Respondent himself which he has not challenged and hence the amount of profiteering assessed by the DGAP can be deemed to be correct. The DGAP has also computed the details of the benefit of ITC which is required to be passed on by the Respondent to each flat buyer as per Annexure-14 which has been accepted by the Respondent. The Respondent at no stage has objected to the calculation of the additional ITC availed by him or the profiteered amount made by the DGAP and has rather admitted the computation of both as correct and agreed to pay the above benefit as per the details prepared by the DGAP vide Annexure-14.

24. It is also revealed from the record that the Respondent had himself assessed the ratio of benefit of additional ITC to taxable turnover as

2.75% and accordingly refunded an amount of Rs. 30,73,671/- to the buyers of the flats. He has also passed on Rs. 1,60,020/- to the Applicants suo-moto. However, as per the assessment made by the DGAP the above ratio comes to 3.04% and hence he is required to refund the balance amount of Rs. 7,56,082/- (Rs. 38,29,753-Rs. 30,73,671) @  $3.04\% - 2.75\% = 0.29\%$ ).

25. Based on the above facts the amount of profiteering in terms of Rule 133 (1) of the CGST Rules, 2017 is determined as Rs. 38,29,753/- including the GST @12% on the base profiteered amount of Rs. 34,19,422/- as per the details furnished by the DGAP. Accordingly, under Rule 133 (3) (a) of the CGST Rules, 2017 it is ordered that the Respondent shall reduce the price to be realized from the buyers of the flats commensurate with the benefit of ITC availed by him as has been detailed above. The above amount of profiteering includes an amount of Rs. 1,98,122/- including GST @12% on the base amount of Rs. 1,76,894/- which has been profiteered by the Respondent from the Applicants. The Respondent has already refunded Rs. 1,60,020/- to the Applicants and has further paid an amount of Rs. 38102/- to them vide Cheque No. 548567 dated 14.12.2018 (Total Rs. 1,60,020+Rs. 38102=Rs. 1,98,122). However, he has not paid interest @18% to the above Applicants from the date from which the above amount was profiteered by him. Therefore, the Respondent is directed to pay interest to the Applicants @18% from the above date. The Respondent is also directed to refund an amount of Rs. 7,17,979/- to the rest of the flat buyers. The Respondent has not submitted the details of the above amount which he had agreed to refund to the other 64 flat owners

accordingly, he is directed to refund an amount of Rs. 7,17,979/- to them along with the interest @18% from the date when the above amount was profiteered by him till the date of payment as per the provisions of Rule 133 (3) (b) of the above Rules. All these amounts and interest shall be paid by the Respondent within a period of 3 months from the date of this order failing which the same shall be recovered by the concerned Commissioner CGST/SGST as per the provisions of the CGST/SGST Act, 2017, under the supervision of the DGAP. A detailed Report confirming the action taken on the directions passed vide this order shall be submitted by the concerned Commissioner CGST/SGST within a period of 4 months from the date of this order.

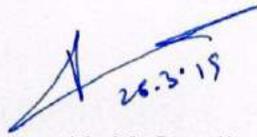
26. It is evident from the above that the Respondent has denied benefit of ITC to the Applicants as well as the rest 64 purchasers of flats in contravention of the provisions of Section 171 (1) of the CGST Act, 2017 and has thus realized more price from them than what he was entitled to charge and has also compelled them to pay more GST than what they were required to pay by issuing incorrect tax invoices and hence he has committed offence under section 122 (1) (i) of the CGST Act, 2017 and therefore, he is liable for imposition of penalty under the above Section read with Rule 133 (3) (d) of the CGST Rules, 2017. Although notice for imposition of penalty has already been issued to the Respondent on 06.12.2018 however, no formal oral or written submissions have been filed by the Respondent on the quantum of penalty. Therefore, keeping in view the principles of natural justice it would be appropriate to issue fresh notice asking him

to explain why penalty should not be imposed on him for the above offence.

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



Certified copy

  
26.3.19

(A.K.Goel)  
Secretary, NAA

Sd/-  
(B. N. Sharma)  
Chairman

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

Sd/-  
(R. Bhagyadevi)  
Technical Member

Sd/-  
(Amand Shah)  
Technical Member

File No. 22011/NAA/114/Gurukripa/2018

Dated: 28.03.2019

Copy to:-

1. Mr. Vivek Gupta, Flat No. 834, Anand Kunj Society, Near Gujranwala Society, Vikaspuri, New Delhi-110018.
2. M/s Gurukripa Developers & Infrastructures Pvt. Ltd., 3, Block B-1, Raja Ram Kumar Plaza, 75, Hazratganj, Lucknow, Uttar Pradesh- 226001.
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. Commissioner of Commercial Taxes, Office of the Commissioner, Commercial Tax, U.P. Commercial Tax Head Office Vibhuti Khand, Gomti Nagar, Lucknow, Uttar Pradesh- 226010
5. Chief Commissioner of Central Goods & Services Tax, Meerut Zone Opp. CCS University, Mangal Pandey Nagar, Meerut, Uttar Pradesh- 250004
6. NAA Website.
7. Guard File.