

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

Case No.	44/2019
Date of Institution	25.04.2019
Date of Order	28.06.2019

In the matter of:

1. Shri Ramesh Kumar Yadav, House No. 622, Sector-9, R K Puram, New Delhi-110022
2. Sh K S Dhingra, A-17, 2nd Floor, Swaran Singh Road, Adarsh Nagar, Delhi-110033
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 Vatika Ltd., 4th Floor, Vatika Triangle, Sushant Lok, Phase-I, Block-A, Mehrauli-Gurgaon road, Gurgaon, Haryana-122002

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. Sh. Ramesh Kumar Yadav Applicant No.1 in person.
2. Sh. K S Dhingra Applicant No. 2 in person.
3. Sh. Akshat Agarwal, Deputy Commissioner and Ms. Gayatri, Deputy Commissioner for the Applicant No. 3.
4. Sh. Sandeep Bhasin, Sr. Manager and Sh. Tushar, Advocate for the Respondent.

ORDER

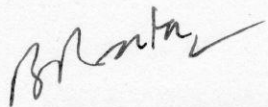
1. The present Report dated 25.02.2019 has been received from the Applicant No. 3 i.e. the Director General of Anti-Profiteering (DGAP) after detailed investigation under Rule 129(6) of the Central Goods & Service Tax (CGST) Rules, 2017. The brief facts of the present case are that the Haryana State Screening Committee on Anti-Profiteering, vide the minutes of its meeting held on 20.06.2018 had forwarded an application dated 08.05.2018 filed by the Applicant No. 1 to the Standing Committee on Anti-Profiteering under Rule 128 of the CGST Rules, 2017. The Applicant No. 1 had stated in his application that the Respondent had resorted to profiteering in respect of supply of construction services related to purchase of an apartment in the project "Independent Floor Phase-II" at Plot No. 18, Ground Floor, Street No. F 3.1, Sector-82, Vatika India Next, Gurugram-122004. 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, on implementation of GST w.e.f. 01.07.2017. The said application was examined by Haryana State Screening Committee in its meeting held on 20.06.2018 and upon being

prima facie satisfied that the Respondent had contravened the provision of Section 171 of the CGST Act, 2017 and forwarded the same with its recommendation to the Standing Committee on Anti-Profiteering for further action in terms of Rule 128 of the CGST Rules, 2017. The said application was examined by the Standing Committee on Anti-Profiteering in its meeting held on 07.08.2018 & 08.08.2018 and it had referred the application to the DGAP for investigation under Rule 129(1) of the CGST Rules, 2017 to determine whether the benefits of reduction in the rate of tax or ITC had been passed on by the Respondent to his recipients.

2. Meanwhile, the Applicant No. 2 was also made a co-applicant on 29.11.2018 in the present case as he had alleged that the Respondent had already recovered Service Tax from the previous allottee of the unit which was allotted to him on cancellation and therefore, the GST should not be recovered from him and also, that the benefit of ITC had not been passed on to him by the Respondent by way of commensurate reduction in price after implementation of the GST w.e.f. 01.07.2017.
3. Thereafter, the DGAP issued a Notice to the Respondent on 11.09.2018 under Rule 129 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 & 2 by way of commensurate reduction in prices 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. The Respondent was also given an opportunity to inspect the non-confidential evidences/information furnished by the above Applicants during the period 17.09.2018 to 19.09.2018. However, the Respondent did not avail of the said

opportunity. Both the Applicants i.e. the Applicant No. 1 & No. 2 were also given an opportunity to inspect the non-confidential evidences/reply furnished by the Respondent on 11.02.2019 or 12.02.2019. Both the Applicants i.e. the Applicant No. 1 & No. 2 availed of the said opportunity and inspected the documents on 12.02.2019. The DGAP had carried out investigation in this case for the period from 01.07.2017 to 31.08.2018.

4. The DGAP in his report stated that the main issues for determination were whether there was benefit of reduction in the rate of tax or the ITC on the supply of the construction service by the Respondent after implementation of the GST w.e.f. 01.07.2017 and if so, whether such benefit was passed on by the Respondent to the recipients, in terms of Section 171 of the CGST Act, 2017.
5. The DGAP has further stated that the Respondent had submitted replies vide letters/emails dated 24.09.2018, 01.10.2018, 02.11.2018, 19.11.2018, 10.01.2019, 24.01.2019, 04.02.2019 and 06.02.2019 stating that the construction of the project "Independent Floor Phase-II" was completed prior to 01.07.2017 and that he had neither availed ITC on any of its inputs procured in the GST regime, nor did he avail/carry forward the pre-GST credit pertaining to the stock held in hand as on 30.06.2017. Further, in reply to the allegation of Applicant No. 2 regarding collection of Service Tax from the previous allottee of the Unit No. 48, Ground Floor, S-1, Sector-82, Vatika India Next, the Respondent submitted that the Applicant No. 2 was the first allottee of the said unit and it was never allotted to anyone before him. The Respondent had also submitted the following documents for the period



July-2017 to August-2018 for all the projects related to the Applicant

No. 1 and 2

- a. Copies of GSTR-1 returns.
- b. Copies of GSTR-3B returns.
- c. Copies of Tran-1 returns in respect of transitional credit availed.
- d. Copies of VAT & ST-3 returns.
- e. Electronic Credit ledger.
- f. Copies of all demand letters and sale agreement/contract and construction agreement.
- g. Tax rates- pre-GST and post-GST.
- h. Copy of Balance Sheet for FY 2016-17 & 2017-18.
- i. Details of turnover and ITC for the project "Independent Floor Phase-II".
- j. List of home buyers in the project "Independent Floor Phase-II".

6. The DGAP in his Report has stated the details of ITC availed by the Respondent and his turnover from the project "Independent Floor Phase-II" during the period April-2016 to August-2018 (Pre-GST and Post-GST) was as per the Table below:-

Table

(Amount in Rs.)

S. No.	Particulars	April, 2016 to March, 2017	April, 2017 to June, 2017	Total (Pre-GST)	July, 2017 to August, 2018 (Post-GST)
(1)	(2)	(3)	(4)	(5)=(3)+(4)	(6)
1	CENVAT credit of Service Tax availed on input services (A)	2,40,09,763	55,55,498	2,95,65,261	-
2	Input Tax Credit of GST availed (B)	-	-	-	-
3	Total Turnover (C)	58,64,39,180	5,51,04,189	64,15,43,369	12,84,39,272

7. The DGAP has further mentioned that from the table above, it was clear that the Respondent had not availed any ITC post implementation of GST w.e.f. 01.07.2017. Hence, there was no ITC available with the Respondent, the benefit of which should have been passed on to the recipients. Therefore, the provisions of Section 171 of the CGST Act, 2017 were not attracted in the present case. Based on the submissions made by the Respondent, it was also observed that the Respondent had supplied construction services in the State of Haryana only.
8. The investigation Report was received by the National Anti-Profiteering Authority (herein after referred to as "NAA") from the DGAP on 26.02.2019 and was considered in the sitting of the NAA held on 05th March, 2019 and it was decided to accord an opportunity of hearing to the Applicant No. 1 & 2 only, but the Applicants were not present in the said hearing. The Applicants were again called for hearing on 09.04.2019, wherein the Applicant No. 1 vide his letter dated 09.04.2019 had made the following submissions:-
- a. The property was booked in the year 2009 under construction-linked payment plan. The builder i.e. the Respondent commenced the construction work on the property in the year 2017 and raised the demand against the work "the completion of brick work with the plaster" on 25.08.2017 and another demand against "completion of flooring work" on 05.09.2017 along with GST @ 18%. But when he alongwith the bank officials visited the site on 10.09.2017, found that no work had commenced for their floor and as such bank was not ready to disburse the loan against the construction. A representation was made to the Respondent in this regard, and the Respondent assured to commence the work. All these payments including GST as

demanding the payment from the buyers even without construction of flat on Plot No. 18, Street F-3.1, EMillia Floor, Sector-82, Gurgaon. He has also attached copies of e-mails from other aggrieved buyers.

- b. Further, a demand for an amount of Rs. 2,33,660/- including GST @ 18% was raised by the Respondent on offer of possession, although the flat was not ready. However, the same was paid to the Respondent. The Respondent handed over the keys of the property without any OC/registration.
- c. The Applicant No. 1 also stated that the construction of the flat was carried out by the builder post-GST regime and GST @18% was charged against various stages of construction and a substantial amount on account of GST had been charged. He also stated that besides GST, an amount of Rs. 10,662/- was also charged as VAT in Sepember-2017 which increased the cost of property contrary to the claim made by Government of India that cost of under construction housing has reduced after implementation of GST.
- d. The Applicant No. 1 also stated that he had requested the Respondent through verbal and written requests to pass on the benefit of ITC as per Government directives, but the Respondent paid no heed to his requests. He also paid several visit to their office at Vatika Traingle, MG Road, Gurgaon with request to pass on the benefit of ITC by way of commensurate reduction in price after implementation of GST w.e.f. 01.07.2017. His several written and verbal requests were gone unanswered.
- e. The Applicant No. 1 also submitted that the Respondent vide his e-mail dated 17.09.2018 intimated that "the exact methodology and the

procedure to be followed for arriving at the benefit if any on account of ITC for the purpose of passing on the benefit in the form of reduction in prices had not been notified in public domain, as and when it is required from the authority, the same will be passed on to him but till date no benefit had been passed on to him.

The Applicant No. 2 vide his letter dated 10.04.2019 has also made the following submissions:-

- a) Mrs. Maya Pruthi had purchased an Independent Floor, being Plot No 27, Primrose GF, 3rd Street, E Block, Sector 83, Vatika India Next, Gurugram, which was to be developed by the Respondent. Mrs. Maya Pruthi executed the Builder-Buyer Agreement (BBA) with the Respondent in April 2011.
- b) The independent floor was to be constructed in 9 stages and the consideration was payable under the construction-linked payment plan and the Respondent had recovered from Mrs. Maya Pruthi consideration for first 3 stages when the BBA was executed.
- c) On recovery of payments made to the Respondent and also an amount of premium, Mrs. Maya Pruthi assigned the BBA to the Applicant No. 2. On receipt of the administrative charges of ₹1,15,621/- and other outstanding dues, the Respondent accepted the assignment of the BBA made by Mrs. Maya Pruthi in the favour of the Applicant No. 2 and changed its records accordingly.
- d) The Respondent, however, did not commence any construction at the allotted site.
- e) He received a letter dated 7.7.2017 from the Respondent stating

that there was revision of the master layout of the township "due

to certain fine tunings” and that “amendments in the master layout (were) necessitated due to architectural and other related considerations”. He was invited to visit Vatika office at Gurgaon on 20.7.2017 for re-allotment of an alternative unit.

- f) On his visit to Vatika office, he was offered re-allotment of a dwelling unit in a proposed multi-storey cluster. Considering certain serious drawbacks in the offer for re-allotment, he had declined the offer.
- g) He visited Vatika office again on 3.10.2017 when he was offered for re-allotment of Unit 48, GF, S-1, Sector 82, Vatika India Next (the Apartment), in lieu of the Independent Floor assigned to him by Mrs. Maya Pruthi, which was accepted by him.
- h) He enquired from the concerned executive the reason for which the Apartment was not offered to him when he visited earlier on 20.7.2017. He was informed that the Apartment had become available after 20.7.2017 on cancellation of allotment of the person who was originally allotted the Apartment (original allottee).
- i) The Apartment was finally allotted to him on 02.11.2017.
- j) On 09.11.2017, he received 4 invoices all dated 7.11.2017, with a total demand of ₹22,03,480.60 (including GST of ₹2,36,087.20).

The details of the demands are as under:

(Amount in ₹)				
Invoice No.	Due	GST	Total	Stage
1/104/1718/00077	393478.68	47217.44	440696.12	On completion of Foundation
1/104/1718/00078	590218.02	70826.16	661044.18	On completion of Ground Floor
1/104/1718 /00079	590218.02	70826.16	661044.18	On completion of super structure
1/104/1718/ 00080	393478.68	47217.44	440696.12	On completion of brickwork and plaster

- k) Later on he received 2 invoices sometime in July 2018, which also included GST @ 12%.
- l) There is no provision in the BBA that enables the Respondent to recover GST.
- m) Clause 2 of the BBA on which reliance is generally placed on behalf of the Respondent to support its claim for recovery of GST, is extracted below:

"2. Payment for taxes, wealth-tax, cesses by Allottee

That the Allottee agrees to pay directly or if paid by the Company then reimburse to the Company on demand Govt. rates, property taxes, wealth tax, any other tax/duty/charge of all and any kind by whatever name called, whether levied or leviable now or in future on this agreement or on the said Complex and/or buildings(s) constructed on the said Portion of Land or on the said dwelling unit, as the case may be, as assessable/applicable from the date of application of the Allottee and the same shall be borne and paid by the Allottee in proportion to the Built-up area of all the dwelling units in the said Building/said Complex as determined by the Company. Further, the Allottee shall be liable to pay from the date of his/her application house tax/ property tax or any other tax, fee or cess as and when levied by any statutory Body or Authority and so long as the said independent dwelling unit of the Allottee is not separately assessed to such Taxes, Fee or cess, the same shall be paid by the Allottee in proportion to the Built-up area of the said independent dwelling unit to the total Built-up area of the dwelling units in the said Building as determined by the Company. These taxes, fees, cesses etc shall be paid by the

As per

Allottee irrespective of the fact whether the maintenance is carried out by the Company or its Nominee or any other Body or Association of all or some of the independent dwelling unit owners."

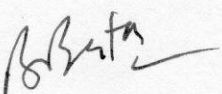
- n) Apart from Clause 2 of the BBA, there is no other provision enabling the Respondent to recover taxes from the Applicant No. 2.
- o) A bare perusal of Clause 2 of the BBA suggests that the taxes, duties etc. contemplated therein are to be shared in proportion to the built-up area of the Apartment vis-à-vis the total area of the whole Vatika India Next complex. In other words, the taxes, duties etc that are levied on the Vatika India Next complex as a whole are reimbursable under Clause 2 of the Builder Buyer Agreement.
- p) Since GST is levied *ad valorem* and not based on the built-up area of the Apartment, reimbursement of GST based on the built-up area is not contemplated under Clause 2 of the Builder Buyer Agreement.
- q) The Service Tax was in force in April 2011 when the BBA was executed. Yet there was no mention of its recovery in Clause 2 which mentioned the property tax, wealth tax etc.
- r) In this view of the matter, GST, like other taxes such as Central Excise Duty, Central Sales Tax, State Sales Tax, VAT, entry tax, municipal taxes etc. which are not included in Clause 2 of the BBA, is to be borne by the Respondent.
- s) It is very pertinent to state that the taxes were not recovered separately before the GST regime and were borne by the

BBafar _____ date _____

- Case No. 44/2019
Ramesh Kumar Yadav & Ors Vs M/s Vatika Ltd.

Service Tax or Goods and Services Tax, as applicable on the date of cancellation/surrender, on Forfeited Earnest Money, Value Added Tax(VAT) – Paid or Payable up to 31.3.2014, Transfer Charges applicable on sale to subsequent buyer, Interest and Certain other charges.

- x) Though the he was unaware of the actual recoveries made by the Respondent from the original allottee upon cancellation of allotment, it is clear that the Respondent had made various recoveries from the original allottee of the Apartment, including of Service Tax or GST, as the case may be, depending on the date of cancellation.
- y) For the reason that no formal invoices for the recoveries of the Service Tax/GST from the original allottee on cancellation of the Apartment were issued by the Respondent, there was a strong possibility that the amount recovered from the original allottee was not deposited with the Government. This is, however, a matter of verification by the Revenue authorities.
- z) He was informed by the Respondent in its email dated 13.11.2017 that the above 4 stages of construction were completed during February 2016 to September 2016. On completion of these 4 stages, invoices, including the Service Tax would have been issued to the original allottee.
- aa) The services supplied to him in November 2017 were the same as earlier supplied to the original allottee during 2016, for which the Service Tax/GST was recovered from the original allottee.
- bb) It is an established principle of taxation that a single transaction cannot be subjected to taxation twice (double taxation). By

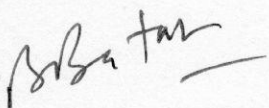


invoking this principle, the Respondent could not have collected GST from him on re-allotment of the Apartment.

- cc) The legislative policy to avoid double taxation has been incorporated in subsection (11) of Section 142 of the CGST Act, 2017.
- dd) The Service Tax was leviable under Chapter V of the Finance Act, 1994, as amended from time to time, during 2016 invoices would have been issued to the original allottee on completion of above noted 4 stages of construction.
- ee) The charging provision for GST in relation to services supplied after 1.7.2017 is governed under subsection (1) of Section 13 of the GST Act, as extracted below:

“13. (1) The liability to pay tax on services shall arise at the time of supply, as determined in accordance with the provisions of this section.”
- ff) Clause (b) of subsection (11) of Section 142 of the GST Act, reproduced below, exempts recovery of GST, notwithstanding Section 13 thereof, in relation to the services governed under Chapter V of the Finance Act, 1994:

(b) notwithstanding anything contained in section 13, no tax shall be payable on services under this Act to the extent the tax was leviable on the said services under Chapter V of the Finance Act, 1994;
- gg) The position in this regard is further clarified in FAQs (FAQ 22) uploaded on the website cbec-gst.gov.in as under:

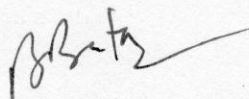


“Q 22. Tax on a particular supply of goods/services is leviable under the existing law. Will GST be also payable if the actual supply is made in GST regime?”

Ans. No tax will be payable on such supply of goods/services under GST to the extent the tax is leviable under the existing law – section 142(11)”

- hh) In view of the facts that for the services supplied to him, Service Tax was leviable in the pre-GST regime and the Service Tax or GST has actually been recovered from the original allottee on completion of construction of four stages of the Apartment, GST is not recoverable from him.
- ii) In the circumstances, the conclusion drawn in the given fact situation is that the recovery of GST from him was wholly unjustified.
- jj) Without prejudice to his main contention that GST could not be recovered from him, there is another issue of allowing him the benefit of ITC.
- kk) In accordance with the notification issued by the Central Government under the GST Act, GST is chargeable at the rate of 12% on the under construction flats.
- ll) During the pre-GST regime, a plethora of taxes, Central as well as State, such as Central Excise, VAT, Entry Tax etc on the inputs (goods and services) going into the construction of flats were being passed on to the allottees in the cost agreed under the BBA and such cost was inclusive of taxes.

mm) In accordance with the GST Act, under the GST regime, the pre-GST taxes have been subsumed in GST. Now the embedded



input taxes are to be utilised for offsetting GST rate of 12% applicable in case of under-construction flats.

- nn) In the current scenario, the Respondent is expected to pass on the benefits of lower tax burden to him by way of reduced GST rate.
- oo) In the message sent to the Respondent on 28.12.2017 on its Client Service Portal, he had sought benefit of ITC and adjustment of the excess recovery made from him. The Respondent in its reply sent under email dated 29.12.2017 informed him that ITC was being worked upon and he would be informed of its applicability.
- pp) In reply to his next email dated 14.3.2018 to the Respondent seeking adjustment of ITC, he received a reply email dated 19.3.2018 informing that the work was under process.
- qq) He sent a letter dated 22.5.2018 seeking expeditious settlement and adjustment of ITC. In reply to the said letter dated 22.5.2018 he was informed by the Respondent by email dated 23.5.2018 as under:

"..... we would like to inform you that under Section 171 of CGST Act provides that any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices. However the exact methodology and the procedure to be followed for arriving at the benefit if any on account of Input Tax Credit for the purpose of passing on the benefit in the form of reduction in prices have not yet been notified in the public domain, whenever the same will be received from authority will be passed to you."

for the

- rr) In two initial the emails the Respondent made a commitment that the impact of ITC was being worked out and he would be informed of the final outcome as and when it was worked out. However, suddenly, the Respondent took a u-turn and stated that the methodology for working out ITC was not available in public domain.
- ss) In view of the changed stance by the Respondent, an appropriate action by the Anti-Profiteering Authority to safeguard the interest of hapless consumers has become imperative.
- tt) In Para 15 of its report, DGAP has found that the Respondent has not availed of ITC post-GST period and therefore it has been concluded that there was no input tax available with the Respondent, the benefit of which could be transferred to the allottees.
- uu) There is no incentive for the Respondent to *suo motu* avail the benefit of ITC because if it does so it has to pass on the benefit to the allottees. However, in pre-GST period taxes were not payable by the allottee in addition to the agreed price, the taxes paid by the Respondent got subsumed in the price. Therefore the benefit of taxes subsumed in the price during pre-GST period has to be passed on the allottee.
- vv) When seen in the light of the above submissions, the invoices issued to him were excessive, which the Respondent has recovered under duress and threat of cancellation of the Apartment.



- ww) The Respondent has charged him excess money and has to make up for the loss suffered by him.
- xx) Certain communications received from the Respondent have been referred to in the report of DGAP. To enable him to present my case more effectively, he should be provided copies of these documents to the extent permitted by law.
- yy) The copies of the following documents referred to in this communication have been attached for reference:

1. Copies of Invoices dated 7.11.2017,
2. Copy of letter dated 17.9.2014, addressed to Mr Tarun Rana
3. Respondent's email dated 13.11.2017,
4. Respondent's email dated 29.12.2017, and
5. Emails exchanged with the Respondent on issue of original allottee.

9. Supplementary Report was sought from the DGAP on the issues raised by the Applicants through their submissions dated 09.04.2019 & 10.04.2019 respectively. The DGAP vide his Report dated 25.04.2019 has stated that in the Report dated 25.02.2019, the ITC availed by the Respondent as a percentage of the Respondent's total turnover, both in the pre-GST and post-GST period, has been worked out and compared to determine whether there was any additional benefit of any ITC in the post-GST period. As the Respondent submitted that he had not availed any ITC in the post-GST period, there could not be any additional benefit of ITC available to the Respondent after implementation of the GST w.e.f. 01.07.2017. The Respondent had charged GST @ 12% on construction services 18% on 2/3rd of the demand raised post-GST because the payment of GST would depend on the time of supply of

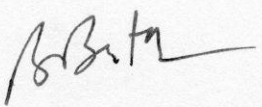
service, in terms of Section 13 of CGST Act, 2017 and the Respondent had raised the demand in the post-GST period.

10. A sitting of the Authority was held on 09th April, 2019, wherein it was decided to accord an opportunity of hearing to the Applicants and the Respondent on 29.04.2019. The Respondent in his reply dated 29.04.2019 has made the following submissions in writing:-

a. The project in which bookings were made by the Applicants No.

1 & 2 was already completed by 30th June, 2017. Copy of the completion certificate issued by Chartered Engineer was also enclosed. He had also claimed that he had given possession of the units to both the Applicants after 30th June, 2017. In this regard, he had issued letter dated 24.10.2017 to the Applicant No. 1 intimating that he had commenced the process of handing over of his project-Independent Floor Phase-II and also intimated about the pending demands. Copy of the letter of intimation of possession was also enclosed. It was thus submitted that the observation, that he had started construction of the project after 01.07.2017 was completely unfounded and any allegation in this regard was denied by the Respondent.

b. It was further submitted that the Respondent had neither availed ITC paid on any of the inputs procured in the GST regime nor did he avail/carry forward the credit pertaining to the stock held in hand on 30th June, 2017. Though, he had received services for minor works after 30.06.2017, ITC thereof was not availed. Copies of GST TRAN-1 Statement and Electronic Credit Ledger for the period July-17 to August-18 were also enclosed.



c. He also stated that the DGAP vide his Report had given a finding that there was no ITC available with the Respondent, the benefit of which could have been passed on to the above Applicants. It was thus concluded that provisions of Section 171 were not attracted. It was also submitted that as he had not availed any ITC benefit in respect of the project, there was no benefit that could have been passed on to the above Applicants.

11. The Authority has carefully examined the DGAP's Report, the written submissions of the above Applicants as well as the Respondent 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?

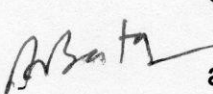
12. Perusal of Section 171 of the CGST Act shows that it provides as under:-

(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."

13. 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

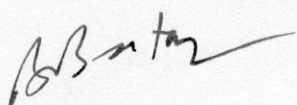
ITC with the introduction of GST. On this issue it has been revealed from the DGAP's Report that no ITC has been availed by the Respondent in the post-GST period and therefore, there was no additional benefit of ITC which had accrued to the Respondent post-GST as compared to pre-GST period. In view of the fact that there was no reduction in the rate of tax nor there was increased additional benefit on account of ITC, the provisions of Section 171 of CGST Act, 2017 could not be invoked in this case.

14. The contentions of Applicant No. 1 mainly stress upon the fact that the construction was not completed before the GST had come into force and the payment was made by him in the GST regime along with GST. He had also alleged that the Respondent had not passed on the benefit of ITC. It can be concluded that none of his contentions fall under the ambit of Anti-Profiteering provisions of Section 171 of the CGST Act, 2017 as the Respondent had not availed any ITC in the post-GST regime as has been stated by the DGAP in his Report. The allegation of not passing on the benefit of ITC is not established. Even the charging of GST @18% in post-GST regime is not within the scope of Section 171 of CGST Act, 2017.

15. Similarly, contentions of Applicant No. 2 are that the Respondent had collected/recovered GST from him beyond the terms of Builder-Buyer Agreement (BBA) for the services which had been completed in the pre-GST regime and that he had not passed on the benefit of the additional ITC available to the Respondent after implementation of the GST w.e.f 01.07.2017. The DGAP in his investigation Report has clearly stated that in the post-GST regime the Respondent had not
 availed ITC and there was no ITC available with the Respondent, the

benefit of which could have been passed on to the recipients. The provisions of Section 171 of the CGST Act, 2017 are not attracted in the present case and therefore, the contentions of the Applicant No. 2 also do not fall under the scope of Section 171 of the CGST Act, 2017.

16. Further, it has been revealed from the records that Respondent had completed the project "Independent Floor Phase-II" prior to implementation of the GST and he had neither availed ITC on any of the inputs procured in the GST Regime, nor had he availed/carried forward the pre-GST credit pertaining to the stock held in hand as on 30.06.2017. Therefore, he is not liable to pass on the benefit of ITC to the above Applicants. Therefore, the provisions of Section 171(1) of the CGST Act, 2017 which state that "*a reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices*", have not been contravened in the present case, as the same are not even applicable.
17. In view of the above, the allegation that the Respondent has not passed on the benefit of ITC is not sustainable.
18. Accordingly, the application filed by the Applicant requesting action against the Respondent for alleged violation of the provisions of the Section 171 of the CGST Act is not maintainable and hence the same is dismissed.

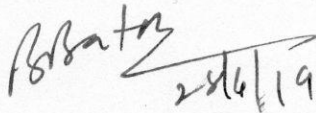


19. A copy of this order be sent to both the Applicants and the Respondent free of cost. File of the case be consigned after completion.

Sd/-
(B. N. Sharma)
Chairman

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

Certified copy



(Bhupinder Batar)
Assistant Commissioner, NAA

Sd/-
(R. Bhagyadevi)
Technical Member

Sd/-
(Amand Shah)
Technical Member

File No. 22011/NAA/08/Vatika/2019

Dated: 28.06.2019

Copy to:-

1. Sh. Ramesh Kumar Yadav, House No. 622, Sector-9, R K Puram, New Delhi-110022.
2. Sh. K S Dhingra, A-17, 2nd Floor, Swaran Singh Road, Adarsh Nagar, Delhi-110033.
3. M/s Vatika Ltd., 4th Floor, Vatika Triangle, Sushant Lok, Phase-I, Block-A, Mehrauli-Gurugram road, Gurugram, Haryana-122002.
4. Director General Anti-Profiteering, Indirect Taxes & Customs, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.
5. NAA Website/Guard File.