

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

Case No.	72/2020
Date of Institution	28.02.2020
Date of Order	13.11.2020

In the matter of:

1. Sh. Rajender Meena, RZG-622, Rajnagar Part-2, Palam Colony, New Delhi-110077.
2. Sh. Chandan Singh Baghour, 32-D, Type-C, BHEL Township, Sector-17, Noida, Uttar Pradesh-201301.
3. Director-General of Anti-Profiteering, Central Board of Indirect Taxes & Customs, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.

Applicants

Versus

M/s Logix Infrastructure Pvt. Ltd., A 4 & 5, Sector 16, Noida, Uttar Pradesh-201301.

Respondent

Quorum:-

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



Present:-

1. Rajender Meena Applicant No.1. in person.
2. Sh. Chandan Singh Applicant No. 2 in person.
3. Sh. Amit Kumar Agarwal, CA and Sh. Abhinav Kalra, CA for the Respondent.

ORDER

1. A Report dated 03.04.2019 was received from the Applicant No. 3 i.e. the Director-General of Anti-Profiteering (DGAP) after a detailed investigation under Rule 129 (6) of the Central Goods & Services Tax (CGST) Rules, 2017. The brief facts of the Report were that Applicant No. 1 had filed application before the Uttar Pradesh State Screening Committee on Anti-profiteering under Rule 128 of the CGST Rules, 2017 and alleged that the Respondent had not passed on the benefit of the input tax credit by way of commensurate reduction in price to the Applicant in respect of the purchase of flat No. 804, in Tower J in the Respondent project "Logix Blossom County", Sector-137, Noida-Greater Noida Expressway, Uttar Pradesh. The Uttar Pradesh State Screening Committee on prima facie having satisfied itself that the Respondent had not passed on the benefit of ITC had forwarded the application of Applicant No. 1 with its recommendation to the Standing Committee on Anti-profiteering for further action, in terms of Rule 128 (1) of the above Rule, which was examined by the Standing

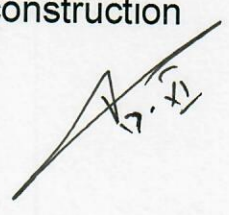
Committee on Anti-profiteering in its meeting held on 06.09.2018 whereby it was decided to forward the same to the DGAP to conduct a detailed investigation in the matter.

2. Another application filed by the Applicant No. 2 against the Respondent was also forwarded by the Standing Committee on Anti-profiteering, vide minutes of its meetings held on 13.12.2018 to the DGAP for detailed investigation.
3. After completing the investigation, the DGAP has submitted his report under Rule 129 (6) of CGST Rules, 2017 on 04.04.2018 pertaining to the period w.e.f. 01.07.2017 to 31.09.2018.
4. The DGAP in his report has stated that a notice under Rule 129 of the CGST Rules, 2017 was issued on 15.10.2018, calling upon the Respondent to reply as to whether he admitted that the benefit of ITC had not been passed on to the above Applicants 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 along with all supporting documents. The Respondent was also allowed to inspect the non-confidential evidence/information furnished by the above Applicants which was availed by him. The Applicants were also allowed to inspect the non-confidential documents/reply furnished by the Respondent on 01.04.2019.
5. The DGAP has reported that the submissions made by the Respondent before him are summed up as follows:
 - a. The Respondent submitted that his project "Blossom County" was undertaken in four phases covering 17 towers out of which

Phase I (Towers D, E, F, G & H) and Phase II (Towers I, J, O, P

and Q) were completed and completion certificates were received from the NOIDA in May 2015 and January 2017, respectively, i.e. in the pre-GST period. However, possession of the units in Phase I & II was offered only in January 2018, and accordingly, final demands for the units in these towers were raised, and GST was charged at the applicable rate. Further, the Respondent has applied for the completion certificate in respect of towers J1 and N and the rest of the towers are still under construction for which Completion Certificate has not been applied for.

- b. As both the Applicants had booked units in tower J (which was constructed in Phase II), the possession of their flats was offered in January 2018, post receipt of Completion Certificate for tower J.
- c. The Respondent submitted that the benefit of accumulated CENVAT credit (input tax credit) could not have been transferred to the units in respect of which the Completion Certificates had been issued before the introduction of GST, since the accumulated balance of CENVAT credit, as of 30.06.2017, was the CENVAT credit on the input services procured in respect of the units that were under construction as on 30.06.2017. The same view would apply to the input tax credit of GST earned post-GST implementation w.e.f. 01.07.2017, as this pertained to the inputs and input services used for the under-construction units.



- d. The Respondent also submitted that he had not taken any credit of VAT in the pre-GST regime.
- e. A total number of 2381 units spread across 17 towers on an area of 35,63,342 sq. ft., were being constructed in the Project 'Blossom County', out of which Completion Certificates had been received for a total of 1454 units spread across 10 towers on an area of 20,90,333 sq. ft. The remaining 927 units in 7 towers, covering total area of 14,73,009 sq. ft., were still under construction.
6. The DGAP in his Report has further stated that the Respondent had claimed that the benefit of accumulated CENVAT credit (input tax credit) could not have been transferred to the units in respect of which the Completion Certificates had been issued before the introduction of GST, since the accumulated balance of CENVAT credit, as on 30.06.2017, was the CENVAT credit on the input services procured in respect of the units that were still under construction as on 30.06.2017 and the same applied to the input tax credit of GST earned post-GST implementation w.e.f. 01.07.2017, as it pertained only to the inputs and input services used for the under-construction units. The DGAP had also stated that the Respondent had submitted that he had not taken any credit of VAT in the pre-GST regime.
7. The DGAP, on verification and completion of his investigation, also submitted that the Respondent has submitted a copy of the agreement dated 27.11.2013, to build/construct and payment plan for the sale of flat no. 804, 8th Floor, Tower-J, to the Applicant, in the project 'Blossom County', measuring 1145 square feet, at the basic sale price

of ₹ 53,81,498/- plus applicable taxes. The details of the payment plan, as per the agreement, have been furnished by the DGAP in Table-A below:-

Table-A		(Amount in ₹)		
S. No.	Payment Stages	Total Area	Per Sq. Feet	Basic Value
1	Basic Value	1145	3888	4451623
2	6 th to 10 th floor PLC	1145	60	68700
3	Landscape Facing	1145	25	28625
4	Internal Development Charges	1145	75	85875
5	External Development Charges	1145	75	85875
6	Electricity Sub-station Charges	1145	40	45800
7	One Time Lease Rent	1145	100	114500
8	Interest-Free Maintenance Security	1145	100	114500
9	Car Parking			250000
10	Club Membership			100000
11	Power Backup		-	36000
Total				5381498

8. The DGAP has further reported that the contention of the Respondent that even though Completion Certificates were obtained for the two phases in the pre-GST period itself, the applicable GST was charged from the homebuyers along with the last demand raised by him, since the possession of the flats in the towers was handed over by him only in the post-GST period (January 2018) and hence the incidence of the tax was higher on the home-buyers.
9. The DGAP further reported that the benefit of additional input tax credit that accrued on account of GST, if not passed on to the recipients, amounted to profiteering which has to be determined at a given point of time in terms of Rule 129(6) of the Rules. Therefore, the

additional input tax credit available to the Respondent and the amounts received by him from the above Applicants and other recipients, in the pre and post GST periods, have to be taken into account to determine the benefit of input tax credit that is required to be passed on by the Respondent to his buyers.

10. The DGAP also reported that before 01.07.2017, i.e. before GST was introduced, the Respondent was eligible to avail CENVAT credit of Service Tax paid on input services. However, CENVAT credit of Central Excise Duty paid on inputs was not admissible, as per the CENVAT Credit Rules, 2004, which were in force at the material time. The Respondent had also submitted to the DGAP that he was neither availing any VAT credit nor was charging VAT from his customers, as was evident from the demand letters, but he was discharging his output VAT liability on deemed 20% value added to the purchase value of the inputs and therefore, there was no direct correlation 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 from the home buyers. The DGAP further stated that as no credit of VAT paid on the inputs was availed by the Respondent, hence, the credit of VAT and the VAT turnover were not considered for computation of the ratio of input tax credit to the turnover for the pre-GST period and further, post-GST, the Respondent could avail the input tax credit of GST paid on all the inputs and input services. Upon further scrutiny by the DGAP, it was observed by him that there was a mismatch in the total demand made from customers as per the home-buyers list and its reconciliation with the turnover reported in the GSTR-3B and ST-3 Returns. It was also

observed that in towers where Completion Certificate had already been obtained in the pre-GST era, for sale of new units after the issue of Completion Certificate, GST had been charged by the Respondent, on the ground that other phases of the Project were incomplete. From the information submitted by the Respondent to the DGAP covering the period April 2016, to September 2018, the details of the input tax credit availed by him, the DGAP has mentioned in the Report that the Respondent's turnover from the project 'Blossom County' and the ratio of input tax credit to turnover, during the pre-GST (April 2016 to June 2017) and post-GST (July 2017 to September 2018) periods, was as has been furnished in Table-B below:-

Table-B

(Amount in ₹)

S. No.	Particulars	April 2016 to March 2017	April 2017 to June 2017	Total	July 2017 to March 2018	April 2018 to Sep 2018	Total
				(Pre-GST)			(Post-GST)
1	2	3	4	(5)=(3)+(4)	6	7	(8)=(6)+(7)
1	CENVAT of Service Tax Paid on Input Services (A)	2,80,55,843	80,57,715	3,61,13,558	-	-	-
2	Credit of VAT Paid on Purchase of Inputs (B)	0	0	0	-	-	-
4	Input Tax Credit of GST Availed (C)	-	-	-	3,45,86,602	1,88,97,474	5,34,84,076
5	Total CENVAT/VAT/Input Tax Credit Available (D)= (A)+(B) or (C)	2,80,55,843	80,57,715	3,61,13,558	3,45,86,602	1,88,97,474	5,34,84,076
6	Total Turnover(as per reconciliation from the homebuyer list) (E)			84,53,59,081			84,96,67,010
7	Total Saleable Area (in sq. ft.) (F)			35,63,342			35,63,342
8	Area Sold relevant to Turnover as per homebuyer List (Flats sold up to 30.09.2018) (G)			5,94,225			4,82,719
9	Relevant CENVAT/INPUT TAX CREDIT (H)= [(D)*(G)/(F)]			60,22,318			72,45,384
10	Ratio of CENVAT/ Input Tax Credit to Turnover [(I)=(H)/(E)]			0.71%			0.85%

11. Based on the above analysis the DGAP has stated that it is clear that the input tax credit as a percentage of the total turnover that was available to the Respondent during the pre-GST period (April 2016 to June 2017) was 0.71% and during the post-GST period (July 2017 to August 2018), it was 0.85% which confirmed that post-GST the

Respondent had benefited from additional input tax credit to the tune of 0.14% [0.85% (-) 0.71%] of the turnover.

12. DGAP further stated that the quantum of profiteering has been computed by comparing the applicable taxes and input tax credit available to the Respondent during the pre-GST period (April 2016 to June 2017) when Service Tax @ 4.5% was payable with the post-GST period (July 2017 to September 2018) when the effective GST rate was 12%. Based on the figures contained in the table above, the comparative figures of the ratio of input tax credit availed/available to the turnover in the pre and post-GST periods, the recalibrated base price, and the excess collection (Profiteering) during the post-GST period, has been tabulated by the DGAP in the Table-C below:-

Table –C			(Amount in ₹)	
S. No.	Particulars		Pre-GST	Post- GST
1	Period	A	April,2016 to June 2017	July 2017 to Sep 2018
2	Output tax rate (%)	B	4.50%	12.00%
3	The ratio of CENVAT/ Input Tax Credit to Total Turnover as per Table - E above (%)	C	0.71%	0.85%
4	Increase in input tax credit availed post-GST (%)	D	-	0.14%
5	<u>Analysis of Increase in input tax credit:</u>			
6	Total Basic cost Demand raised from July 2017 to September 2018 as per home-buyers data	E		84,96,67,010
7	GST charged	F= E*12%		10,19,60,041
8	Total demanded	G		95,16,27,051
9	Recalibrated Base Price	H=E*(1-D) or 99.86% of E		84,84,77,476
10	GST @12%	I = H*12%		10,18,17,297
11	Commensurate demand price	J=H+I		95,02,94,773
12	Excess Collection of Demand or Profiteering Amount	K=G - J		13,32,278

13. From the above analysis, the DGAP has concluded that the additional input tax credit of 0.14% of the turnover should have resulted in the commensurate reduction in the base price as well as cum-tax price and based on the above-mentioned CENVAT/input tax

credit availability in the pre and post-GST period and the details of total demand raised post-GST, on the Applicants and other home buyers on which GST liability @ 12% was discharged by the Respondent during the period 01.07.2017 to 30.09.2018, the Respondent has realized an excess amount to the tune of Rs. 3880/- from the Applicant no. 1 and Rs. 3929/- from Applicant No. 2 which included both the profiteered amount @0.14% of the base price and GST on the said profiteered amount. Further he has realized an excess amount of Rs. 13,24,469/- which included both the profiteered amount @0.14% of the pre-GST base price and GST on the said profiteered amount, from 353 other recipients who were not Applicants in the present proceedings.

14. After perusal of the DGAP's report, this Authority in its sitting held on 09.04.2019 decided to hear the Applicants and the Respondent on 26.04.2019. A notice dated 09.04.2019 was also issued to the Respondent to explain why the Report dated 03.04.2019 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. He was also directed to respond as to why penalty under Section 29, 122 to 127 of the CGST Act, 2017 read with Rule 21 and 133 of the CGST Rules, 2017 should not be imposed on him. However, the Respondent sought an adjournment of the hearing on 26.04.2019. Further opportunity of hearing was granted by this Authority on 03.05.2019 but the Respondent did not appear and instead sought adjournment. The hearings could take place only on 21.05.2019 and 28.05.2019. The hearing was attended by Sh. Amit Kumar Agarwal, CA and Sh. Abhinav Kalra, CA on behalf of the

Respondent, Sh. Rajender Meena Applicant No. 1, Sh. Chandan Singh Applicant No. 2 and Sh. Shivendu Pandey, Superintendent, DGAP for Applicant No. 3. During the course of the hearings, the Respondent filed his written submissions on 06.06.2019 vide which he submitted that being a law-abiding company he accepted the profiteering of Rs. 13,32,278/- as per the DGAP's report and did want to litigate the matter further and was ready to pass on the said amount to his homebuyers in line with the DGAP's report. He also submitted the following:-

- a. Working sheet evidencing that each of the home buyers had been passed on the benefit by way of issue of credit notes.
- b. Copy of the GST registration certificate.
- c. Copies of Service Tax and GST returns from December 2016 to March 2019.
- d. He further stated that as per the builder buyer agreement last instalment was due at the time of possession; that he had received the completion certificate for phase II of the project comprising 5 towers (I/J/O/P/Q) in January 2017; that even after receiving the completion certificate, certain furnishing activities had to be done before the possession could be handed over to the homebuyers; that he had offered possession after finishing of the towers in all respects; and that, therefore, he had raised final demand on his homebuyers only at the time of possession as per builder buyer agreement.

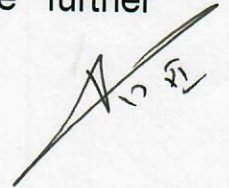
15. Applicant No. 1 and Applicant No. 2, vide their submissions dated 07.05.2019, 07.06.2019, and 05.07.2019, stated that they had booked their units on 31.10.2013; that as per the builder-buyer

agreement, the flats were to be delivered by the Respondent on 31.10.2015; that the Respondent received the completion certificate from the Noida Authority on 06.01.2017 but raised the final invoice only on 19.01.2018, i.e. one year after receiving the completion certificate; that by the time the flats were handed over by the Respondent to them, GST had been implemented and they had to bear the higher rate of tax.

16. Applicant No. 1 further stated that due to the delay in handing over the possession of the unit by the Respondent and the delay in raising the final demand, an extra financial burden of Rs. 3,08,011/- had been incurred by him; Applicant No. 2 similarly submitted that due to the delay in raising the final demand on the part of the Respondent, the extra financial burden incurred by him was Rs. 3,59,355/-.
17. This Authority after carefully considering all the Reports filed by the DGAP, submissions of the above Applicants and the Respondent, and other material placed on record had observed certain discrepancies in the DGAP's Report dated 03.04.2019 and accordingly ordered reinvestigation in the matter in terms of 133(4) of CGST Rules, 2017 on the following grounds vide its I.O. No. 22/2019 dated 18.12.2019:-
- (i) The DGAP vide Row No. 6 of Table-C of his Report has claimed that the Total Taxable Turnover as per the home Buyer's list for residential Area (E) for the period from July 2017 to September 2018 was Rs. 84,96,67,010/-, however, the total post GST turnover as can be calculated from GSTR-1 returns filed by the Respondent and enclosed with the report of the

DGAP appears to be Rs. 28,97,48,916.6/-. Hence, the correct figure for turnover needed to be verified. It is also required to be explained why the figures from statutory returns should not be taken to arrive at the profiteered amount. The DGAP's Report in Para 18 has mentioned that there was a mismatch in the total demand made from the customers as per the home-buyers list and its reconciliation with the turnover reported in the GSTR-3B and ST-3 returns, which needed to be reinvestigated and confirmed.

- (ii) The turnover from the home buyers list submitted before the DGAP by the Respondent is much greater than the corresponding turnover reflected in the statutory returns filed by the Respondent himself. Thus, the area sold relevant to turnover worked out based on the home buyer list as mentioned in Table-C of the DGAP report is required to be reinvestigated.
- (iii) The Central Government, on the recommendation of the GST Council, had levied 18% GST (effective rate 12% given 1/3rd abatement on value) on construction service, vide Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017. The effective GST rate on construction service in respect of affordable and low-cost housing was further reduced from 12% to 8%, vide Notification No. 1/2018-Central Tax (Rate) dated 25.01.2018 w.e.f. 25.01.2018. However, the same was not been reflected correctly in the GSTR-3B returns, and accordingly, this aspect was also required to be further investigated.



18. As per the directions of this Authority passed vide I.O. No. 22/2019 dated 18.12.2019 under Rule 133 (4), the DGAP furnished his Report dated 27.02.2020 in accordance with Rule 129 (6) of the CGST Rules, 2017. The DGAP has stated that on receipt of the aforesaid Order from this Authority on 20.12.2019, the documents/information submitted by the Respondent was re-examined and cross-verified with the Report dated 03.04.2019 submitted by the DGAP before this Authority and all the issues as mentioned in the order of this Authority have been duly covered in this report.
19. The DGAP has reported that as per the directions of this Authority vide I.O. No. 20/2019 dated 13.12.2019, re-investigation of the case was initiated. At the time of submission of the investigation report dated 14.06.2019, the Respondent had submitted all the requisite information and data for the period covered under investigation. As there had been no direction to extend the period of investigation, the same set of data was found sufficient for the current re-investigation.
20. The DGAP has further reported that the main issues to be examined related to the observation of this Authority in its I.O. dated 13.12.2019, which are as follows:-
- a. Total Taxable Turnover for the project as per the Home-buyers list for residential Area (E) for the period from July 2017 to September 2018 was Rs. 84,96,67,010/-, however, the Total post-GST turnover as calculated from GSTR-1 returns filed by the Respondent and enclosed with the Report of the DGAP appeared to be Rs. 28,97,48,917/-. Hence the correct figure of turnover was required to be confirmed and it was also required to be explained why the figures of turnover in the pre and post

GST periods should not be taken from the statutory returns to arrive at the profiteered amount. In explanation to the above issue, the DGAP has reported that the working of the total Post-GST turnover was revisited and it was found that the figure for the post-GST turnover highlighted by the Authority, i.e. 28,97,48,917, was only the aggregate of the B2B and B2C components of the turnover of the GSTR1 of the Respondent and did not include the turnover reported by him from other sources that included turnover from Credit/Debit Notes, Advances Received, Advances Adjusted, Non-GST and Exempted supply of services. The DGAP has further stated that In terms of Section 13 (2) of the Act, the definition of the 'time of supply of services' included components such as Advances Received and that the tax liability was required to be discharged on the amounts received as advances in addition to turnover received from payments made by the homebuyers. The DGAP has nevertheless added that since there was a mismatch between the demand made from the home-buyers and the turnover reported by the Respondent in his statutory GSTR-1 and GSTR-3B returns, the Respondent was asked to submit proper reconciliation of the same. The Respondent vide his email dated 14.02.2020 (Annex-5), submitted reconciliation of the turnover of the Respondent reported by him in his statutory returns and the aggregate of the demands raised by him from his home-buyers. Further, the Respondent has also provided details of actual B2C invoice value and actual advances received which has been incorporated in his revised

GSTR-1 Returns. As such the total turnover in GSTR-3B of the Respondent was Rs. 89,04,58,155/-, while in his GSTR-1 Returns it was Rs. 89,04,58,423/-, and thus there was a nominal mismatch of Rs. 269/- only. Hence, the primary issue of mismatch between the actual demand made from the home-buyers and the turnover as reported in his statutory returns was resolved. The next issue regarding the explanation sought as to why the figures from the statutory returns should not be taken to arrive at the profiteered amount. In this regard, the DGAP has clarified that the turnover reported in different statutory returns included income from other sources, or consideration received for providing other services, etc. which were subject to the different effective rate of tax in the relevant period, on which the benefit of additional ITC was not applicable, i.e. Section 171 of the CGST Act was not applicable. The amount of benefit of additional ITC was to be determined on the demands raised or consideration received in advance from the customers and had to be accordingly distributed. Therefore, if the turnover as per statutory returns was considered, for determination of profiteering, the distribution of the additional benefit of ITC i.e. profiteering would not only be inaccurate but appropriating the same amongst the home-buyers would be impossible too.

- b. As the turnover from the home-buyers list submitted before the DGAP by the Respondent was much greater than the corresponding turnover reflected in the statutory returns filed by the Respondent himself, thus, the area sold relevant to turnover worked out based on the home-buyers list as mentioned in

Table-C of the DGAP report was required to be investigated. In explanation to this point, the DGAP has submitted that the Respondent vide his submissions dated 14.02.2020 (Annex-5) has provided reconciliation of actual demands raised from the home-buyers and other considerations received by him with his GST returns and details of revised GSTR-1 returns. As explained above, for the determination of profiteering, only the turnover related to the home-buyers on which the benefit of additional ITC was relevant, i.e. Section 171 of the CGST Act was applicable was relevant. The turnover used in Table C of the report dated 03.04.2019, was correctly considered as the total of the demands raised and advances received from his home-buyers and not the turnover in his statutory returns in the report dated 03.04.2019. Accordingly, the area sold relevant to turnover worked out based on the homebuyers list as mentioned in the report was correct.

- c. In reply to the para that the effective GST rate on construction service in respect of affordable and low-cost housing was further reduced from 12% to 8%, vide Notification No. 1/2018-Central Tax (Rate) dated 25.01.2018 w.e.f. 25.01.2018, however, the same has not been reflected correctly in the GSTR-3B returns, and accordingly, this aspect was also required to be further investigated, the DGAP has reported that as has been stated by this Authority, the effective GST rate on construction service in respect of affordable and low-cost housing was reduced from 12% to 8%, vide Notification No. 1/2018-Central Tax (Rate) dated 25.01.2018 w.e.f. 25.01.2018,

however, as the impugned project under consideration was not an affordable housing project, this rate reduction had no bearing whatsoever in this matter.

21. The DGAP has further reported that the amount of profiteering by the Respondent on account of contravention of provisions of Section 171 of the CGST Act, 2017 for the period covered was correctly estimated as Rs. 13,32,278/-.
22. The DGAP has concluded that as has been mentioned in the report dated 03.04.2019, the benefit of additional ITC of 0.14% of the turnover had accrued to the Respondent and the same was required to be passed on to the Applicants and other recipients. The Respondent has contravened the provisions of Section 171 of the Act, since the benefit of additional ITC @0.14% of the relevant turnover raised by the Respondent from his home-buyers, during the period 01.07.2017 to 31.08.2018, has not been passed on to the Applicants and other recipients. On this account, the Respondent had realized an excess amount to the tune of Rs. 3,880/- from Applicant No. 1 and Rs. 3,929/- from Applicant No. 2, which included both the profiteered amount @0.14% of the base price and GST on the said profiteered amount. Further, the investigation revealed that the Respondent had realized an excess amount of Rs. 13,24,469/- which included both the profiteered amount @0.14% of the pre-GST base price and GST on the said profiteered amount, from 353 other recipients who were not Applicants in the present proceedings. These recipients were identifiable as the Respondent had provided their names and addresses along with unit no. allotted to them. Therefore, this additional amount of Rs. 13,24,469/- was required to be returned

to such other eligible recipients. The DGAP has also stated that the Respondent had supplied construction services in the State of Uttar Pradesh only and the investigation has covered the period from 01.07.2017 to 30.09.2018. Profiteering, if any, for the period post-September, 2018, was not examined as the exact quantum of ITC that would have been available to the Respondent in the future could not have been determined at that stage, when the investigation report was submitted and the project was ongoing. Hence, given the aforementioned findings, it appeared that the provisions of Section 171(1) of the CGST Act, 2017, requiring 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”*, had been contravened by the Respondent in the present case.

23. The above Report of the DGAP was considered by this Authority in its meeting held on 03.03.2020 and it was decided to hear the Applicants and the Respondent on 25.03.2020. Accordingly, notice dated 05.03.2020 was issued to the Respondent to explain why the Report dated 27.02.2020 should not be accepted and his liability for violation of the provisions of Section 171 of the CGST Act, 2017 should not be fixed.
24. Personal hearings were given to the parties on 25.03.2020, 20.04.2020, and 13.05.2020. However, due to the Covid-19 pandemic, the scheduled hearings could not be held on the above dates. Therefore, the Respondent and the Applicant No. 1 and 2 were further directed to file their consolidated written submissions.

The Respondent vide his submissions dated 05.06.2020 has stated that:-

- a. He had accepted his liability against the profiteered amount as has been calculated by the DGAP and would not like to litigate the matter further.
 - b. That he had already passed on the benefit of ITC amounting to Rs. 13,32,278/- to his customers/flat buyers by way of credit notes and accordingly reducing the demands raised by him on his customers.
 - c. That he had submitted the ledger of credit passed in respect of the flat/home buyers whom such credit had been passed and had submitted the sample copies of the credit notes in compliance vide his reply dated 06.06.2019.
 - d. That he did not want to be heard in person and requested to take up the case based on the facts and documents already submitted to this Authority.
25. Vide order dated 09.06.2020, the DGAP was directed to verify the claim of the Respondent that he had passed on the benefit of additional ITC to the flat/home buyers. The DGAP vide his supplementary report dated 20.07.2020 has reported that the Respondent had submitted the ledger account in respect of 355 home buyers and Credit Notes (20) on a sample basis wherein the details of the benefit of ITC passed on to the recipients(355 home buyers) had been mentioned. The details of the ITC passed on to the recipients(355 home buyers) had been verified from the ledger account, credit notes, and Annexure-17 of the report of the DGAP dated 03.04.2019, and the same was found in order.

26. This Authority also granted personal hearing through video conferencing to the Respondent and the Applicants on 14.08.2020. Applicant No. 1 and 2 appeared for the hearing through video conferencing and filed their submissions dated 14.08.2020.
27. The Applicant No. 1 and 2 vide submissions dated 14.08.2020 have stated that they had booked flats with the builder on 31.10.2013 and as per builder buyer agreement the flats were to be delivered by 31.10.2015. The Respondent had received completion certificate from NOIDA in January 2017 but raised the final invoice on 19.01.2018 (one year after receiving the Completion Certificate) and by that time GST had been implemented. Applicant No. 1 and 2 have stated that due to the delay on the part of the Respondent in raising final demand, an extra financial burden of Rs. 3,00,000/- approx. had to be incurred by them.
28. We have carefully considered the Reports filed by the DGAP, all the submissions and the documents placed on record, and the arguments advanced by the Respondent and find that the Respondent is executing his "Logix Blossom County" project in Noida, Uttar Pradesh. It has also been revealed that the Applicants No. 1 & 2 had filed their complaints alleging that the above Respondent was not passing on the benefit of ITC to them on the flats which they had purchased from him in the project, as per the provisions of Section 171 of the above Act. The above two complaints were examined by the Standing Committee on Anti-profiteering and were forwarded to the DGAP for detailed investigation as per the provisions of Rule 129 (1) of the CGST Rules, 2017. Accordingly, the DGAP had investigated all the

complaints together and submitted his Report under Rule 129 (6) of the CGST Rules, 2017. The present investigation pertains to the period from 01.07.2017 to 30.09.2018.

29. We take note of the fact that Respondent vide his submissions dated 05.06.2020 has accepted his liability of passing on the benefit of additional ITC as per the report of the DGAP and has also submitted that he had passed on the benefit of Rs. 13,32,278/- to his customers/flat buyers by way of credit notes and by way of reducing the instalments to be paid by his homebuyers against the demands pending from them and the proof of the same has also been submitted before the DGAP. This claim of the Respondent has been accepted as verified by the DGAP vide his supplementary report dated 20.07.2020. We observe that the DGAP has verified the detail of the ITC passed on by the Respondent to his homebuyers/ recipients (355 home buyers) from the ledger account, Credit Notes (20) and Annexure-17 of the DGAP's report.
30. We also observe that the Applicant No. 1 & 2 have stated that they had booked their flats with the builder on 31.10.2013 and as per the builder buyer agreement, the flats were to be delivered by 31.10.2015. The Respondent raised the final invoices on 19.01.2020 after receipt of the Completion Certificate from NOIDA in January 2017 but one year after receiving the Completion Certificate and by that time GST had been implemented thus resulting in extra financial burden to them which was Rs. 3,00,000/- approx. In this regard, it is pertinent to mention that as per the provisions of Section 171 of the CGST Act, 2017 read with Rule 127 and 133 of the CGST Rules, 2017, this Authority has only been mandated to ensure that both the

benefits of tax rate reduction and ITC are passed on to the customers. Therefore, this Authority has no mandate to look into the matter whether the Respondent has wrongly charged GST from the Applicants. The Applicants may take up the matter with the jurisdictional CGST/ SGST officers.

31. It is also apparent to us from the above Reports that in respect of the 'Blossom County' project the CENVAT credit/ITC as a percentage of the total turnover which was available to the Respondent during the pre-GST period was 0.71% and during the post-GST period this ratio was 0.85% as per the Table-C mentioned above. Therefore, the Respondent has benefited from the additional ITC to the tune of 10.25% (10.25% - 0%) of the total turnover in respect of the above Phase which he was required to pass on to the flat buyers of the above Phase. It has also found that the Respondent has not reduced the basic price of his flats by 0.14% in case of the above Project due to additional benefit of ITC resulting in contravention of the provisions of Section 171 of the CGST Act, 2017. It is also evident that the amount of benefit of ITC which has not been passed on by the Respondent or the profiteered amount came to Rs. 13,32,278/- which included 12% GST on the basic profiteered amount. This amount also included the profiteered amount of Rs. 3,880/- and Rs. 3,929/- including 12% GST in respect of the Applicant No. 1 and 2. The details of all the buyers who have purchased flats from the Respondent along with their unit numbers and the profiteered amount in respect of each buyer have been provided vide Annexure-17 attached with the Report of the DGAP, who are required to be passed on the above amount as the benefit of ITC.

32. Based on the above findings this Authority hereby determines the profiteered amount as Rs. 13,32,278/- as per the provisions of Section 171 (1) read with Rule 133 (1) of the above Rules which includes GST @ 12% on the base profiteered amount of Rs. 11,89,534/-. The profiteered amount in respect of the Applicant No. 1 & 2 is held to be Rs. 3,880/- and Rs. 3,929/- respectively. The Respondent has claimed that he had passed on the benefit to his homebuyers and the above claim of the Respondent has been verified by the DGAP vide his supplementary report dated 20.07.2020. The DGAP has reported that the Respondent had submitted the ledger account in respect of 355 home buyers and credit notes (20) on a sample basis wherein the details of the benefit of ITC passed on to the recipients (355 home buyers) have been mentioned and that the details of the ITC passed on to the recipients (355 home buyers) have been verified from the ledger account and the credit notes against Annexure-17 of the report of the DGAP dated 03.04.2019, and the same were found to be in order. However, the Applicant No. 1 & 2 have not submitted acknowledgement of having received the benefit. Therefore, the concerned jurisdictional Commissioner is directed to ensure that the amount profiteered by the Respondent is passed on to the above Applicants.

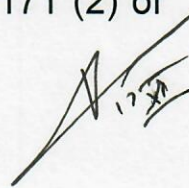
33. Further, it is also revealed from the submissions of the Respondent that he has not passed on interest @18% to his recipients/flat buyers on the profiteered amount, which shall be paid by the Respondent to his recipients/flat buyers from the date of receipt of

the additional price till the amount is paid to each buyer, as he has used this amount in his business, as per the provisions of Section 171 (1) of the CGST Act, 2017 read with Rule 133 (3) (b) of the CGST Rules, 2017. Accordingly, the DGAP is directed to ensure that the interest is paid to the eligible home buyers and submit report confirming payment of the interest. In case the interest is not paid the same shall be recovered by the concerned CGST/SGST Commissioner and paid to the eligible buyers.

34. Given the above facts, this Authority under Rule 133 (3) (a) of the CGST Rules, 2017 read with Sub-Section 171 (1) further orders that the Respondent shall reduce the prices to be realized from the buyers of the flats commensurate with the benefit of ITC received by him as has been detailed above.
35. Further, we observe that the present investigation of the DGAP was only up to 30.06.2019. Hence, any additional benefit of ITC, which shall accrue subsequently to the respondent, shall also be passed on to the eligible homebuyers by the Respondent. Further, the total additional ITC that will be finally available to the Respondent cannot be determined at this stage, in as much as the construction of the project is yet to be completed. Therefore, we order that the DGAP shall carry out a comprehensive investigation at the time of issue of occupancy certificate.
36. It is also evident from the above narration of facts that the Respondent has denied the benefit of ITC to the buyers of the flats being constructed by him in his present project in contravention of the provisions of Section 171 (1) of the CGST Act, 2017 and has

committed an offence under Section 171 (3A) of the above Act and therefore, he is liable for imposition of penalty under the provisions of the above Section. However, since the provisions of Section 171 (3A) have come in to force w.e.f. 01.01.2020 whereas the period during which violation has occurred is w.e.f. 01.07.2017 to 31.12.2018, hence the penalty prescribed under the above Section cannot be imposed on the Respondent retrospectively. Accordingly, Show Cause Notice directing him to explain why the penalty prescribed under Section 171 (3A) of the above Act read with Rule 133 (3) (d) of the CGST Rules, 2017 should not be imposed on him is not required to be issued.

37. The DGAP in his report dated 03.04.2019 has reported that in the project 'Blossom County', there were 2381 total number of units spread across 17 towers, out of which Completion Certificate had been received for a total of 1454 units spread across 10 towers. The remaining 927 units in 7 towers were under construction. Keeping in view the above findings of the DGAP there are sufficient reasons to believe that there is need to examine whether the Respondent has passed on the benefit of ITC to the buyers of the remaining 7 towers or not. Therefore, this Authority, in terms of the provisions of Section 171 (2) of the CGST Act, 2017 directs the DGAP to further investigate the above 7 towers of the project of the Respondent for violation of the provisions of Section 171 of the CGST Act 2017 and to submit his Report to this Authority in terms of Section 171 (2) of CGST Act 2017.



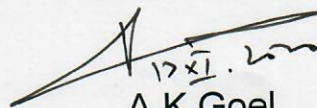
38. As per the provisions of Rule 133 (1) of the CGST Rules, 2017 this order was required to be passed within a period of 6 months from the date of receipt of the Report from the DGAP under Rule 129 (6) of the above Rules. Since the present Report has been received by this Authority on 28.02.2020 the order was to be passed on or before 27.08.2020. However, due to the prevalent pandemic of COVID-19 in the country, this order could not be passed on or before the above date due to *force majeure*. Accordingly, this order is being passed today in terms of the Notification No. 65/2020-Central Tax dated 01.09.2020 issued by the Government of India, Ministry of Finance (Department of Revenue), Central Board of Indirect Taxes & Customs under Section 168 A of the CGST Act, 2017.

39. A copy each of this order be supplied to the Applicants, the Respondent, Commissioners CGST/SGST Uttar Pradesh as well as the Principal Secretary (Town & Planning), Government of Uttar Pradesh for necessary action. File be consigned after completion.

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



Certified Copy


A.K Goel
(Secretary, NAA)

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

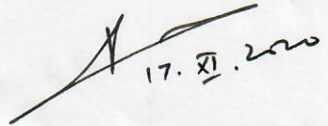
Sd/-
(Amand Shah)
Member(Technical)

F. No.22011/NAA/32/logix/2019/59850-5991

Date: 17.11.2020

Copy To:-

1. M/s Logix Infrastructure Pvt. Ltd., A 4 & 5, Sector 16, Noida, Uttar Pradesh 201301.
2. Sh. Rajender Meena, RZG-622, Rajnagar Part-2, Palam Colony, New Delhi 110077.
3. Sh. Chandan Singh Baghour, 32-D, type-C, BHEL Township, Sector-17, Noida, Uttar Pradesh-201301.
4. Director General Anti-Profiteering, Central Board of Indirect Taxes & Customs, ^{2nd} Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.
5. The Commissioner of commercial Taxes, U.P. Commercial Tax head office Vibhuti Khand, Gomti Nagar, Lucknow-226010(U.P.).
6. The Principal Commissioner, CGST & Central Excise, Lucknow Zone, C-56/42, Sector-62, Noida, Uttar Pradesh-201309.
7. Principal Secretary to Govt. of Uttar Pradesh, Town and Planning Department, TCG/1-A-V/5, Vibhuti Khand, Gomti Nagar, Lucknow-226010(U.P.).
8. NAA Website/Guard File.


17.11.2020
A. K. GOEL
SECRETARY, NAA