

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

I.O. No.	29/2020
Date of Institution	13.05.2020
Date of Order	27.11.2020

In the matter of:

1. Sh. Sibi John, G-246, First Floor, Sector-10, Faridabad, Haryana-121006.
2. Director General of Anti-Profiteering, Indirect Taxes & Customs, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.

Applicants

Versus

M/s Logix City Developers Pvt. Ltd., A-4&5, Sector-16, Noida-201301.

Respondent

Quorum:-

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



Present:-

1. None for the Applicants.
2. None for the Respondent.

ORDER

1. The present Report dated 27.03.2020 has been received from the Applicant No. 2 i.e. the Director General of Anti-Profiteering (DGAP) on 13.05.2020 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 Applicants No. 1 had filed an application alleging profiteering by the Respondent in respect of purchase of Flat No. A-804, Tower-A, in the project "Blossom Zest" situated at Sector 143, Noida, Gautam Budh Nagar, Uttar Pradesh. The Applicant No. 1 had alleged that the Respondent had not passed on the benefit of input tax credit (ITC) by way of commensurate reduction in price after implementation of GST w.e.f. 01.07.2017, in terms of Section 171 of the Central Goods and Services Tax Act, 2017. The Applicant No. 1 had also submitted copies of the demand letters along with his application form in the format APAF.
2. The Standing Committee on Anti-Profiteering had examined the application filed against the Respondent and it had referred the same to the DGAP for conducting detailed investigation under

- Rule 129 (1) of the CGST Rules, 2017 to ascertain whether the benefits of reduction in the rate of tax or ITC had been passed on by the Respondent to his recipients.
3. Thereafter, the DGAP on receipt of the reference from the Standing Committee on Anti Profiteering, had issued notice to the Respondent on 08.07.2019 under Rule 129 (3) of the above Rules, calling upon the Respondent to reply as to whether he admitted that the benefit of ITC had not been passed on to the recipients 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 the supporting documents. The Respondent was also given opportunity to inspect the non-confidential evidence/information furnished by the Applicant No. 1 during the period from 15.07.2019 to 17.07.2019. However, the Respondent did not avail of the said opportunity. The Applicant No. 1 was also given an opportunity to inspect the non-confidential evidence/reply furnished by the Respondent on 15.01.2020 and 16.01.2020. The Applicant's father Shri John Daniel inspected the documents on 14.01.2020 on behalf of the Applicant No. 1.
4. The DGAP in his above Report has stated that the period covered by the current investigation was from 01.07.2017 to 30.06.2019. Also, the time limit to complete the investigation was extended upto 27.03.2020 by this Authority vide its Order dated 24.12.2019 in terms of Rule 129 (6) of the CGST Rules, 2017.

5. The DGAP has also stated that in response to the notice dated 08.07.2019 and various reminders, the Respondent replied vide letters/e-mails dated 19.07.2019, 29.07.2019, 05.08.2019, 22.08.2019, 09.09.2019, 16.09.2019, 22.10.2019, 13.11.2019, 05.12.2019, 07.12.2019, 09.12.2019, 10.12.2019, 23.12.2019, 08.01.2020, 14.01.2020, 17.01.2020 and 28.01.2020 and has stated that:-

- a. He was in the process of developing many towers and the progress of each tower was at a different stage and completion certificates have been obtained for some of the towers. The Respondent has also submitted Completion Certificate (CC) dated 08.02.2019, as received from the NOIDA for Towers A, B, C and Studio Towers 1 & 2 (Phase-I). He has further submitted that in terms of RERA Act, regulating the real estate promoters were legally bound to register their on-going as well as new projects and maintain separate account for each of the projects.
- b. The Respondent has also submitted reconciliation between the turnover as reported in its statutory erstwhile Service Tax Returns or GSTR and the turnover in his Annual Profit and Loss account. Further, the Respondent has provided details of reversal of credit for unsold units in the towers where CC has been received (i.e. Phase-I) and reversal of ITC in respect of opting of Composition Scheme w.e.f 01.04.2019. The

Respondent has further submitted that with effect from 01.04.2019, he has opted for GST @ 5% and 1% scheme without GST credit therefore he was not taking credit on construction services. Further, the Respondent has not taken VAT credit since beginning to June, 2017.

- c. The Respondent has further submitted that the turnover reported in Service Tax/ GST Returns cannot be reconciled with the turnover reported in the Balance Sheet as in case of "Continuous projects" revenue was recognised in Balance Sheet on the basis of "percentage of completion" method as per Guidance note prescribed by the Institute of Chartered Accountants of India. Whereas in the case of Service Tax/ GST Returns tax was deposited based on monthly demand raised to the customers as per the Builder Buyer Agreement. The monthly demand raised on the customer was reflected in the Service tax/ GST Returns. Due to two separate mechanism followed differently, the figure reflected in the Service Tax/ GST Returns did not match with the figure appearing in the Balance Sheet.

6. The DGAP in his Report has further stated that vide the aforesaid letters, the Respondent had submitted the following documents/information:-



- (a) Copies of GSTR-1 Returns for the period from July, 2017 to June, 2019.
- (b) Copies of GSTR-3B Returns for the period from July, 2017 to June, 2019.
- (c) Copies of Tran-1 Statement for transitional credit availed by the Respondent.
- (d) Copies of VAT & ST-3 Returns for the period from April, 2016 to June, 2017.
- (e) Copies of VAT Assessment Orders for the Assessment Year 2013-14 to 2015-16.
- (f) Electronic Credit Ledger for the period from July, 2017 to December, 2019.
- (g) CENVAT/ITC Register for the period from 01.04.2017 to 31.03.2019.
- (h) Reconciliation of turnover reported in GST Returns and list of Home buyers for the period from July, 2017 to March, 2019.
- (i) Copies of all demand letters and agreement issued to the Applicant No. 1.
- (j) Copies of agreements, invoices and receipts for various sample units.



- (k) Copy of Occupancy Certificate dated 08.02.2019 for phase-I of the project.
- (l) Tax rates, pre-GST and post-GST.
- (m) Details of Service Tax, CENVAT credit for the period from April, 2016 to June, 2017 and output GST and ITC of GST for the period from July, 2017 to June, 2019.
- (n) Tower-wise status of the Project as on 31.03.2019.
- (o) Copies of Balance Sheets and Cost Audit Reports for Financial Year 2016-17 & 2017-18.
- (p) List of home buyers in the project "Blossom Zest".

7. The DGAP has stated that the Respondent has also submitted that the information relating to the Customer's Names, Addresses, Contact Details, Saleable Area, Total Agreement Value, and Date of Allotment were to be treated as Confidential in terms of Rule 130 of the above Rules.

8. The DGAP in his report has further stated that various replies of the Respondent and the documents/evidence on record has been carefully examined by him and the main issues to be examined were (a) whether there was benefit of reduction in the rate of tax or ITC on the supply of construction service supplied by the Respondent after implementation of the GST w.e.f. 01.07.2017 and if so, (b) whether the Respondent has passed on such benefit

to the recipients by way of commensurate reduction in prices, in terms of Section 171 (1) of the CGST Act, 2017.

9. The DGAP in his report has mentioned that at the outset, it was observed from the website of the Respondent <http://www.logixgroup.in/blossom-zest.php>, that he has obtained Tower-wise 4 RERA registrations for the project. The registration-wise details of the project have been furnished by the DGAP in Table- 'A' below:-

Table-'A'

Tower	Phase	RERA Registration No.	Total Flats	Total Carpet Area	Total Super Area	Remarks
A	1	UPRERAPRJ5597	156	93,656	1,59,428	OC received on 08.02.2019.
B			156	93,656	1,59,428	
C			156	93,656	1,59,428	
SAT1			308	1,11,356	1,71,872	
SAT2			308	1,11,388	1,71,872	
D	2	UPRERAPRJ4834	156	93,042	1,51,780	On going project. Composition Scheme opted w.e.f. 01.04.2019
E			156	93,656	1,51,780	
F			156	93,656	1,51,780	
SAT3	3	UPRERAPRJ4870	308	1,11,292	1,63,560	On going project. Composition Scheme opted w.e.f. 01.04.2019
SAT4			308	1,10,640	1,63,560	
SAT7			308	1,11,284	1,63,560	
SAT8	4	UPRERAPRJ4903	308	1,11,292	1,63,560	On going project. Composition Scheme opted w.e.f. 01.04.2019
SAT9			308	1,11,292	1,63,560	
SAT10			308	1,11,292	1,63,560	
GRAND TOTAL			3400	14,51,158	22,58,728	

10. The DGAP has further reported that the Respondent had not maintained any separate books of account for each registration for booking of project specific purchases and expenses. Further, on receiving the Occupancy Certificate (OC) for Phase-I (Tower- A, B, C, SAT-1 & SAT-2), the Respondent had reversed an amount of

Rs. 1,31,77,976/- for the unsold area in the project as on 08.02.2019 by computing ITC proportionate to the unsold area to total area of all four projects. Therefore, profiteering, if any, has to be computed by taking into account total ITC availed by the Respondent and total turnover of all the projects, as the Respondent had no project wise books of account.

11. The DGAP in his report has also submitted that another relevant point in this regard was para 5 of the Schedule-III of the CGST Act, 2017 (Activities or Transactions which shall be treated neither as a supply of goods nor a supply of services) which reads as *"Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building"* read with clause (b) of Paragraph 5 of Schedule II of the Central Goods and Services Tax Act, 2017 which 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"*. Thus, the DGAP has claimed that the ITC pertaining to the residential units which were under construction but not sold was provisional ITC which might be required to be reversed by the Respondent, if such units remained unsold at the time of issue of the CC, in terms of Section 17 (2) & Section 17 (3) of the Central Goods and Services Tax Act, 2017. Therefore, the ITC pertaining to the unsold units would not

fall within the ambit of this investigation and the Respondent was required to recalibrate the selling prices of such units to be sold to the prospective buyers by considering the proportionate benefit of additional ITC available to him post-GST.

12. The DGAP has further claimed that in the present case, the Respondent has received OC for 1,084 Units having carpet area of 5,03,712 square feet out of a total of 3400 units (carpet area 14,51,158 sq. ft.). In respect of the units for which he has received OC, the Respondent has reversed ITC of Rs. 1,31,77,976/- towards unsold units. Therefore, the ITC availed post-GST period (after reversal) pertained to the sold units only.

13. Further, with respect to other three projects, the Respondent has opted for composition scheme w.e.f. 01.04.2019 and therefore, he was not eligible to avail any input tax credit post 01.04.2019. Further, the Respondent has reversed ITC of Rs. 58,68,387/- for the unsold units in other three projects and has charged 5% GST (without benefit of ITC) for the units to be sold to the prospective buyers. Therefore, complete ITC availed by the Respondent during 01.07.2017 to 31.03.2019 post reversal on account of unsold units pertained to the sold units as on 31.03.2019 only.

14. The DGAP in his report has further submitted that the Respondent had received OC for one of the projects and remaining three projects were still under construction as on 31.03.2019, therefore, the profiteering, if any has been computed

in two parts (i) Project where OC has been received and (ii) Projects which are still under construction as on 31.03.2019.

15. The DGAP has further stated that the manner of determination of ITC in respect of input services and reversal thereof has been defined under Rule 42 of the CGST Rules, 2017, relevant portion was re-produced as under:

(f) *the amount of input tax credit attributable to inputs and input services intended to be used exclusively for effecting supplies other than exempted but including zero rated supplies, be denoted as 'T4';*

(g) *'T1', 'T2', 'T3' and 'T4' shall be determined and declared by the registered person at the invoice level in FORM GSTR-2;*

(h) *input tax credit left after attribution of input tax credit under clause [(f)] shall be called common credit, be denoted as 'C2' and calculated as $C2 = C1 - T4$;*

(i) *the amount of input tax credit attributable towards exempt supplies, be denoted as D1 and calculated as-*

$$D1 = (E \div F) \times C2$$

where,

E' is the aggregate value of exempt supplies during the tax period, and

F' is the total turnover in the State of the registered person during the tax period:

[Provided that in case of supply of services covered by clause (b) of paragraph 5 of Schedule II of the Act, the value of E/F' for a

tax period shall be calculated for each project separately, taking value of E and F as under

*E= aggregate **carpet area** of the apartments, construction of which is exempt from tax plus aggregate carpet area of the apartments, construction of which is not exempt from tax, but are identified by the promoter to be sold after issue of completion certificate or first occupation, whichever is earlier;*

F= aggregate carpet area of the apartments in the project;

Explanation 1: In the tax period in which the issuance of completion certificate or first occupation of the project takes place, value of E shall also include aggregate carpet area of the apartments, which have not been booked till the date of issuance of completion certificate or first occupation of the project, whichever is earlier;

Explanation 2: Carpet area of apartments, tax on construction of which is paid or payable at the rates specified for items (i), (ia), (ib), (ic) or (id), against serial number 3 of the Table in the notification No. 11/2017-Central Tax (Rate), published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) dated 28th June, 2017 vide GSR number 690(E) dated 28th June, 2017, as amended, shall be taken into account for calculation of value of 'E' in view of Explanation (iv) in paragraph 4 of the notification No. 11/2017-Central Tax (Rate), published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-

section (i) dated 28th June, 2017 vide GSR number 690(E) dated 28th June, 2017, as amended.

The proportional amount for the present case is calculated as under:

$$D1=(E÷F) × C2,$$

The values for the above variables are:

E= 1,33,118 sq. ft. (Unsold Carpet area in phase-I as on 08.02.2019).

F= 5,03,712 sq. ft. (Total Carpet area in phase-I).

C2= Rs. 3,34,56,702/-*

$$D1= (1,33,118/5,03,712)* 3,34,56,702= Rs. 88,41,737/-$$

*note: Common Credit (denoted by C2) in the Phase-I has been furnished by the DGAP as under:

Table-'B'

S.No.	Particulars	Amount
1	GST Input Rec. July, 2017 to 07 Feb., 2019 (A)#	9,63,86,349
2	Total Carpet Area of Four Projects (B)	14,51,158
3	Total Carpet Area of Phase-I for which OC received (C)	5,03,712
4	Input Tax Credit pertaining to Phase-I (D)=(A)*(C)/(B)	3,34,56,702

#Transition Credit of Rs. 4,72,70,597/- has not been considered as the same did not qualify the definition of ITC in terms of Section 2(62) & 2(63) of the CGST Act, 2017.

16. The DGAP has also stated that the Respondent was required to reverse the proportionate benefit of additional ITC available to him post-GST for the unsold units as on date of issuance of OC to the tune of Rs. 88,41,737/-. The Respondent vide his submissions dated 17.01.2020 has submitted that he has reversed ITC amounting to Rs. 1,31,77,976/- for the unsold units of Phase-I as

on 08.02.2019 (date of OC) in the GSTR-3B Return for the month of December, 2019 on 17.01.2020 only after pointing out by the DGAP during the course of present investigation. In this regard, it was observed that although the Respondent has reversed total ITC of Rs. 1,31,77,976/- on 17.01.2020 but the Respondent has not reversed the proportionate CENVAT credit availed for the unsold Units from the commencement of the project till 30.06.2017 in terms of the provisions contained in Cenvat Credit Rules, 2004 as amended.

17. The DGAP has further stated that the Respondent has submitted GST Returned Demand Details & Summary and Reconciliation for the period from April to June, 2019. On examination of the same, it was observed that the Respondent has discharged 5% GST on the output liability of demand raised for the units of Phase-I where OC was received on 08.02.2020. In this regard, the DGAP has mentioned that Notification No. 03/2019-Central Tax (Rate) dated 29.03.2019 (**Annex-22**) defined the term "*ongoing project*" as a project which **meets all the following conditions**, namely-

- (a) commencement certificate in respect of the project, where required to be issued by the competent authority, has been issued on or before 31st March, 2019, and it is certified by any of the following that construction of the project has started on or before 31st March, 2019:-



- (i) an architect registered with the Council of Architecture constituted under the Architects Act, 1972 (20 of 1972); or
- (ii) a chartered engineer registered with the Institution of Engineers (India); or
- (iii) a licensed surveyor of the respective local body of the city or town or village or development or planning authority.
- (b) Where commencement certificate in respect of the project, is not required to be issued by the competent authority, it is certified by any of the authorities specified in sub clause (a) above that construction of the project has started on or before the 31st March, 2019;
- (c) **Completion certificate has not been issued or first occupation of the project has not taken place on or before the 31st March, 2019**
- (d) Apartments being constructed under the project have been, partly or wholly, booked on or before the 31st March, 2019.

Explanation.- For the purpose of sub- clause (a) and (b) above , construction of a project shall be considered to have started on or before the 31st March, 2019, if the earthwork for site preparation for the project has been completed and excavation for foundation has started on or before the 31st March, 2019.

[Emphasis supplied].

Therefore, the Phase-I (Separate Project having separate RERA Registration) was not an ongoing project. Further the Tax Research Unit of the Department of Revenue, Central Government

has issued FAQs (Part II) on real estate dated 14.05.2019 **(Annex-23)** which clarify at point no. 10 *“Time of supply of the service by way of construction of apartments in such projects falls prior to 01.04.2019 and accordingly the rates as existed prior to 01.04.2019 would apply to such balance demands”*. Relevant portion is reproduced below:-

10	What shall be the rate of GST applicable on projects in respect of which OC has been issued prior to 01.04.2019, but the balance demands are pending? Such projects are neither projects which commence on or after 01.04.2019 nor ongoing projects.	Time of supply of the service by way of construction of apartments in such projects falls prior to 01.04.2019 and accordingly the rates as existed prior to 01.04.2019 would apply to such balance demands.
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18. The DGAP has reported that the Phase-I was not an “Ongoing Project” and the Respondent could not have opted for new scheme of paying GST @ 5% (without ITC) and he was required to discharge GST output liability @12%. By not doing so, the he has contravened the provisions of Section 74 of the CGST Act, 2017.

19. It has also been reported by the DGAP that as regards the computation of profiteering with respect to other three projects (i.e. Tower- D, E, F, SAT-3, SAT-4, SAT-7, SAT-8, SAT-9 & SAT-10), it was observed that these were “Ongoing projects” in terms of

Notification No. 03/2019- Central Tax (Rate) dated 29.03.2019 as per Para-16 Supra and therefore the Respondent could opt for the new scheme of paying GST @ 5% without ITC. However, to opt for the New Scheme, the Respondent was required to reverse the ITC as on 31.03.2019 as per the illustrations given in the said Annexure- II of the said Notification. In terms of Annexure-II of the Notification No. 03/2019- Central Tax (Rate) dated 29.03.2019, the Respondent was required to reverse an amount of Rs. 1,80,81,032/- towards ITC on opting new scheme of paying GST@5% (Without ITC) which included Rs. 1,24,28,262/- towards ITC availed during July, 2017 to March, 2109 and Rs. 56,52,769 towards transitional credit availed in terms of Section 140 of the CGST Act, 2017. Detailed working of Rs. 1,80,81,032/- has been furnished by the DGAP in **Annexure-24**. However, the Respondent has submitted that he has reversed an amount of Rs. 58,68,387/- on 17.01.2020 only after raising query of such reversal by the DGAP in the ongoing investigation. Therefore, there was a short reversal of **Rs. 1,22,12,645/-**.

20. The DGAP has further stated that with regard to the phase-I of the Project where OC was received on 08.02.2019 and other three phases of the project, where OC has not been received prior to 01.07.2017, i.e. before the GST was introduced, the Respondent has availed Credit of Service Tax paid on input services only. No credit was availed in respect of Central Excise Duty paid on the inputs as also the input tax credit of VAT paid on inputs by the

Respondent. Further, post-GST, the Respondent was entitled to avail ITC of GST paid on all the inputs and the input services including the sub-contracts. From the information submitted by the Respondent for the period from April, 2016 to June, 2019, the details of the ITC availed by him, his turnover from the Phase-I & other three phases of the project "**Blossom Zest**", the ratios of ITC to turnovers, during the pre-GST (April, 2016 to June, 2017) and post-GST (July, 2017 to June, 2019) periods has been furnished by the DGAP in Table- 'C' below:-

Table'C'				
(Amount in ₹.)				
S. No.	Particulars	Pre-GST	Total post-GST (Before opting Composition Scheme)	
		01.04.2016 to 30.06.2017 (Pre-GST)	Post-GST for Phase-I where OC received on 07.02.2019)	Post-GST for Units where OC not received (01.07.2017 to 31.03.2019)
1	CENVAT of Service Tax Paid on Input Services as per ST-3 (A)	27,323,322	-	-
2	Input Tax Credit of VAT Paid on Inputs (B)	-	-	-
3	Input Tax Credit of GST Available (C)	-	33,456,702	69,423,192
4	Less: ITC to be reversed for Unsold Units on receiving of OC as per para- 14 above. (D)	-	8,841,737	0
5	Less: ITC to be reversed on opting Composition Scheme w.e.f. 01.04.2019 as para- 19 above (E)			12,428,262
6	Total CENVAT / VAT / Input Tax Credit Available (F)= (A+B) or (C-D-E)	27,323,322	24,614,965	56,994,930
7	Total Turnover from home-buyers list (G)	134,113,412	51,39,75,398*	18,755,643
8	Total Saleable Carpet Area (in SQF) (H)	1,451,772	373,497	948,060
9	Total Sold Carpet Area relevant to turnover as per Home Buyers List (in	166,406	373,497	8,286

	SQF) (I)			
10	Relevant ITC [(J)= (I)*(F)/(H)]	3,131,872	24,614,965	498,133
11	Ratio of CENVAT/VAT/Input Tax Credit to Turnover (K=J/G)	2.34%	4.79%	2.66%

*Note: With regard to towers where OC was received, the Input tax credit availed (after reversal for unsold area) pertains to all the units sold before the OC was received. Further, the demand to be raised post-GST as on 30.06.2017 and to be raised for units sold from 01.07.2017 till date of receipt of OC is also well-known to the Respondent. Therefore, for the purpose of computation of ratio of Input Tax Credit to Taxable Turnover during post-GST period, the total demand to be raised post GST for such units has been accordingly considered.

21. The DGAP has further reported that w.e.f. 01.04.2019, the Respondent has opted for new scheme of 5% without ITC, therefore, the demand to be raised on or after 01.04.2019 would bear incidence of reduced rate of GST of 5% (as compared to demand raised in normal scheme of 12% GST), therefore, he was not entitled for any benefit of ITC on or after 01.04.2019. Thus, the ITC remained after reversal as on 01.04.2019 pertained to the units which bore normal rate of Tax @12% only.
22. The DGAP has further stated that as per the Table- 'C', it was clear that the ITC as a percentage of the turnover that was available to the Respondent during the pre-GST period (April, 2016 to June, 2017) was 2.34% and during the post- GST period (July, 2017 to receipt of OC), it was 4.79%. This clearly confirmed that post-GST, the Respondent has benefited from additional ITC

to the tune of 2.45% [4.79% (-) 2.34%] of the turnover. Similarly, where OC has not been received, the ITC as a percentage of the turnover that was available to the Respondent during the post-GST period (July, 2017 to March, 2019) was 2.66%. This clearly confirmed that post-GST, the Respondent has been benefited from additional ITC to the tune of 0.32% [2.66% (-) 2.34%] of the turnover. Accordingly, the profiteering has been examined by comparing the applicable tax rate and ITC available in the pre-GST period (April, 2016 to June, 2017) when Service Tax @4.50% was payable with the post-GST period (July, 2017 to March, 2019) when the effective GST rate was 12% (GST @18% along with 1/3rd abatement for land value) on construction service, levied vide Notification No.11/2017-Central Tax (Rate), dated 28.06.2017. Accordingly, on the basis of the figures contained in Table-'C' above, the comparative figures of the ratios of ITC availed/available to the turnovers in the pre-GST and post- GST periods, the recalibrated base price and the excess realization (profiteering) during the post-GST period has been furnished by the DGAP in Table-'D' below:-

(Blossom Zest)		Table 'D'		(Amount in	
Rs.)					
S.No.	Particulars		Total post-GST		
1	Period	A	Post-GST for phase-I where OC received on 07.02.2019	Post-GST for Units where OC not received (01.07.2019 to 31.03.2019)	
2	Output GST Rate (%)	B	12%	12%	
3	Ratio of CENVAT credit/Input Credit to	C	4.79%	2.66%	

	Total Turnover as per table -'C' above (%)			
4	Increase in Input Tax Credit availed Post-GST (%)	D= 4.79% or 2.66% less 2.34%	2.45%	0.32%
5	<u>Analysis of Increase in input tax credit</u>			
6	BSP Amount to be Collected/ raised as on 30.06.2017 From Customers made booking in Pre-GST period.	E	4663,78,253	-
7	BSP Amt. (Agreement amount) to be Collected/ raised From Customers made booking during 01.07.2017 to 07.02.2019 (before receive OC)	F	475,97,145	-
8	BSP Amount to be Collected/ raised from customers during 01.07.2017 to 31.03.2019 (where OC not received)	G		187,55,643
9	Total Turnover Post-GST	H= (E+ F) or (G)	5139,75,398	187,55,643
10	GST@12% over Base Price	I= H*12%	616,77,048	22,50,677
11	Total Amount to be collected/raised	J=H+I	5756,52,446	210,06,320
12	Recalibrated Base Price	K=(H)*(1-D)	5013,83,001	186,95,625
13	GST@12%	L=K*12%	601,65,960	22,43,475
14	Commensurate demand price	M=K+L	5615,48,961	209,39,100
15	Excess Collection of Demand or Profiteering Amount	N=J-M	141,03,485	67,220
16	Total Excess Collection of Demand or Profiteering Amount	O= Sum of N	141,70,705	

23. The DGAP has further stated that as per the above Table-'D' above, the additional ITC of 2.45% and 0.32% of the turnover should have resulted in the commensurate reduction in the base prices as well as cum-tax prices. Therefore, in terms of Section 171 of the CGST Act, 2017, the benefit of such additional ITC was

required to be passed on by the Respondent to the respective recipients. Also, profiteering, if any has to be determined at a given point of time, in terms of Rule 129(6) of the above Rules and it has to be commensurate with the benefit of ITC at the time of issue of invoice/demand letters which was the point of determination of time of supply of service in terms of Section 13 of the Act. In other words, by not reducing the pre-GST basic prices by 2.45% and 0.32% in both the categories, on account of additional benefit of ITC and charging GST @12% on the pre-GST basic prices, the Respondent appeared to have contravened the provisions of Section 171 of the of the CGST Act, 2017.

24. On the basis of the aforesaid CENVAT/ITC availability pre and post-GST and the details of the amount to be collected by the Respondent from the Applicant No. 1 and other home buyers as on 30th June, 2017 and the new bookings made post 01.07.2017 till OC was received, the amount of benefit of ITC that has not been passed on by the Respondent to the recipients or in other words, the profited amount came to **Rs. 1,41,03,485/-** which included GST @12% on the base profited amount of Rs. **1,25,92,397/-**. The home buyer and unit no. wise break-up of the profited amount has been furnished by the DGAP in **Annexure-26**. This profited amount was inclusive of Rs. 94,150/- (including GST on the base amount of ₹ 84,062/-) which was the profited amount in respect of the Applicant No. 1, mentioned at Serial No. 778 of Annexure-26. Similarly, amount of additional

benefit of ITC where OC has not been received, it appeared that on the basis of the aforesaid CENVAT/ITC availability pre and post-GST and the details of the demand as raised by the Respondent from other home buyers during the period from 01.07.2017 to 31.03.2019, the amount of benefit of ITC that needed to be passed on by the Respondent to the recipients, came to Rs. **67,220/-** which included 12% GST on the base profiteered amount of **Rs. 60,018/-**. The home buyer and unit no. wise break-up of that amount has also been furnished by the DGAP in **Annexure-27** of his Report. The DGAP has also observed that the Respondent has supplied construction services in the State of Uttar Pradesh only.

25. The DGAP has further stated that the Respondent has submitted that he has booked total of 2279 units in the whole project as on 31.03.2019, however 20 customers have since then cancelled their bookings and 9 existing home-buyers have opted to shift to similar units in towers where OC has been received. Accordingly, the home-buyers data provided by him was for the existing live customers as existing on 31.03.2019, after which he has opted for composition scheme. Accordingly, the above computation of profiteering was with respect to 852 units in the towers which were booked prior to receipt of OC and 9 similar units in other towers where home-buyers shifted to these towers before issuance of OC. In total, profiteering has been calculated for total of 861 units in towers where OC has been received.

Similarly, in case of units in those towers, where OC has not been received, the Respondent has booked 1398 flats till 31.03.2019, from the home-buyers data provided by him, it was observed that demands were raised only from 26 home buyers and no demands were raised from other 1372 [1398- 26] home buyers, during the post-GST period from 01.07.2017 to 31.03.2019 (period covered by investigation). Therefore, if the ITC in respect of these 1372 units was considered to calculate profiteering in respect of 26 units where demands have been raised after GST, the ITC as a percentage of turnover may be erroneous. Furthermore, demand to be raised/received on or after 01.04.2019 would bear incidence of only 5% GST as compared to 12% GST (to be charged in normal scheme). Therefore, the benefit of reduction in rate of tax of 7% [12% (-) 5%] ITC would be available in respect of these 1372 units and therefore, no further benefit of ITC was required to be passed on the demand to be raised on or after 01.04.2019 as the additional benefit of ITC available to the Respondent was 0.32% which was lower than 7% reduction in rate of tax of GST.

26. The DGAP has concluded that post-GST, the benefit of additional ITC to the tune of 2.45% (where OC received) and 0.32% (where OC not received) of the turnover has accrued to the Respondent post-GST and the same was required to be passed on by the Respondent to the Applicant No. 1 and other recipients for the project "Blossom Zest". The provisions of Section 171 of the CGST Act, 2017 have been contravened by the Respondent in

as much as the additional benefit of ITC @2.45% of the amount to be collected by the Respondent from the home buyers as on 30th June, 2017 and the new bookings made post 01.07.2017 till OC was received, has not been passed on to 861 recipients including the Applicant No. 1 and by 0.32% of the base price demand made by the Respondent during the period from 01.07.2017 to 31.03.2019, has not been passed on by the Respondent to such 26 other recipients. On this account, the Respondent has been found to have profiteered an amount of Rs. 1,41,70,705/- (Rs. One Crore Forty One Lakh Seventy Thousands Seven Hundred and Five only) which included profiteered amount of Rs. 94,150/- from the Applicant No. 1 which included both the profiteered amount @ 2.45% of the base price and GST on the said profiteered amount. Further, the investigation has revealed that the Respondent has also realized an additional amount of Rs. 1,40,09,335/- from 620 other recipients (in phase-I) and Rs. 67,720/- from 26 other recipients (other phases) who were not Applicants in the present proceedings. These recipients were identifiable as per the documents provided by the Respondent, giving the names and addresses along with Unit No. allotted to such recipients. Therefore, the total additional amount of Rs. **1,40,77,055/-** [Rs. 1,40,09,335/- (+) Rs. 67,720/-] was required to be returned to such eligible recipients.

27. The DGAP has further reported that during the ~~present~~ investigation the profiteering has been computed for the period

from 01.07.2017 to 31.03.2019. Profiteering, if any, for the period post 01.04.2019 has not been examined as no benefit of ITC for construction service would be available to the Respondent in future as he has opted for composition scheme as per Notification No. 03/2019- Central Tax (Rate) dated 29.03.2019.

28. The DGAP has also reported that Section 171(1) of the CGST Tax Act, 2017, requiring that “any reduction in rate of tax on any supply of goods or services or the benefit of ITC shall be passed on to the recipient by way of commensurate reduction in prices”, has been contravened by the Respondent in the present case.

29. The above investigation Report was received by this Authority from the DGAP on 13.05.2020 and was considered in its sitting held on 15.05.2020 and it was decided to accord an opportunity of hearing to the Applicants and the Respondent on 08.06.2020. Notice dated 27.05.2020 was also issued to the Respondent directing him to explain why the Report dated 27.03.2020 furnished by the DGAP should not be accepted and his liability for violation of the provisions of Section 171 of the CGST Act, 2017 should not be fixed.

30. The Applicant vide his e-mail dated 08.06.2020 has filed his written submissions stating:-

a. That as a buyer, he was charged 12% GST by the Respondent i.e. Rs. 4,12,432/- for an outstanding demand of Rs. 34,33,480/- and after adjustment of the ITC benefit of Rs. 94,150/-, the effective reduction in the GST was 9.3%.

b. That rate of GST was 12% with ITC and 5% without ITC. Therefore, post ITC adjustment, the effective GST should be between 5% to 7% or the profiteered amount should have been between 1.7 Lakh and 2.06 Lakh.

31. The above submissions of the Applicant No. 1 were forwarded to the DGAP to file his clarifications under Rule 133(2A) of the CGST Rules, 2017. The DGAP vide his supplementary Report dated 29.06.2020 has stated that profiteering was determined by comparing the ratio of ITC to turnover for the pre-GST and the post-GST periods, to determine the benefit of additional ITC. The Applicant hasn't understood the methodology and has just stated his expectations. However, no objection has been expressed against the methodology adopted by the DGAP by him.

32. The Respondent vide his submissions dated 24.07.2020 has stated:-

- a. That he has accepted the profiteered amount of Rs. 1,41,70,705/- and undertook to pass on the said benefit of ITC to the eligible recipients as soon as directions for the same were issued to him by this Authority.
- b. That with respect to the reversal of ITC of Rs. 1,80,81,032/-, he has reversed total ITC amounting to Rs. 1,90,46,363/- (including the credit carried forward in form GST Tran-1).



- c. That he has submitted a detailed computation of the said credit reversal before the DGAP along with his previous reply and that the reversal of ITC was in line with the prescribed formula.
- d. That he did not want personal hearing in the present matter.
33. This Authority has carefully examined the DGAP's Reports, the written submissions of the above Applicants as well as that of the Respondent. The DGAP in Para-11 of his report has mentioned that it was observed from the website of the Respondent <http://www.logixgroup.in/blossom-zest.php>, that he has obtained Tower-wise 4 RERA registrations for the above project. The registration-wise details of the project have been furnished by the DGAP in Table- 'A' below:-

Table-'A'

Tower	Phase	RERA Registration No.	Total Flats	Total Carpet Area	Total Super Area	Remarks
A	1	UPRERAPRJ5597	156	93,656	1,59,428	OC received on 08.02.2019.
B			156	93,656	1,59,428	
C			156	93,656	1,59,428	
SAT1			308	1,11,356	1,71,872	
SAT2			308	1,11,388	1,71,872	
D			2	UPRERAPRJ4834	156	
E	156	93,656			1,51,780	
F	156	93,656			1,51,780	
SAT3	3	UPRERAPRJ4870	308	1,11,292	1,63,560	On going project. Composition Scheme opted w.e.f. 01.04.2019
SAT4			308	1,10,640	1,63,560	
SAT7			308	1,11,284	1,63,560	
SAT8	4	UPRERAPRJ4903	308	1,11,292	1,63,560	On going project. Composition Scheme opted w.e.f. 01.04.2019
SAT9			308	1,11,292	1,63,560	
SAT10			308	1,11,292	1,63,560	
GRAND TOTAL			3400	14,51,158	22,58,728	

34. The DGAP has also submitted in the above Para that the Respondent has not maintained any separate books of account for each registration for booking of the project specific purchases and expenses. Further, on receiving the OC for Phase-I (Tower- A, B, C, SAT-1 & SAT-2), the Respondent has reversed an amount of Rs. 1,31,77,976/- for the unsold area in the project as on 08.02.2019 by computing ITC proportionate to the unsold area to the total area of all four projects. Therefore, the DGAP has contended that the profiteering has to be computed by taking into account the total ITC availed by the Respondent and total turnover of all the projects, as the Respondent has no project wise books of account.
35. It is apparent from the above claim of the DGAP that both the pre and post GST period total turnovers, CENVAT & ITC credits, area saleable and sold has been taken as per the information supplied by the Respondent, as the Respondent has not maintained separate accounts for the separately registered projects. On the basis of details supplied by the Respondent ratios of CENVAT/ITC to turnovers have been computed as 2.34% for the pre-GST period from 01.04.2016 to 30.06.2017, 4.79% for the period from 01.07.2017 to 06.02.2019, in respect of the units in which OC was received on 07.02.2019 and 2.66% w.e.f. 01.07.2017 to 31.03.2019 for the units in respect of which OC has not been received. As per the above ratios the DGAP has claimed that the Respondent has benefited from additional ITC to the tune

of 2.45% [4.79% (-) 2.34%] of the turnover in the period from 01.07.2017 to 06.02.2019 in respect of the units in which the OC has been received on 07.2.2019 and to the tune of 0.32% [2.66% (-) 2.34%] of the turnover w.e.f. 01.07.2017 to 31.03.2019 in respect of the units in which OC has not been received. Accordingly, on the basis of the figures contained in Table-'C' supra, the DGAP has calculated the comparative figures of the ratio of ITC availed/available to the turnover in the pre-GST and post- GST periods as well as the turnovers, the recalibrated base price and the excess realization (profiteering) during the post-GST period, as per Table-'D' supra.

36. As per the CENVAT/ITC availability in the pre and post-GST periods and the details of the amount to be collected by the Respondent from the home buyers as on 30th June 2017 and the new bookings made post 01.07.2017 till OC was received, the amount of benefit of ITC that has not been passed on by the Respondent to the recipients or in other words, the profiteered amount has been computed by the DGAP as ₹ 1,41,03,485/- which includes GST @12% on the base profiteered amount of ₹ 1,25,92,397/-. The home buyer and unit no. wise break-up of the amount has been given by the DGAP in Annexure-26 of his Report dated 27.03.2020. Similarly, amount of additional benefit of ITC in cases where OC has not been received, the amount of benefit of ITC that needed to be passed on by the Respondent to the recipients has been calculated by the DGAP as ₹ 67,220/-, the

home buyer and unit no. wise break-up of the amount has been given in Annexure-27 of the above Report.

37. Therefore, it is clear that all the computations of the profiteered amount have been done on the basis of the information supplied by the Respondent as he has not maintained separate accounts in respect of all the four projects. However, as per Para 2 (IV) of the Registration Certificate issued in Form REP-III by the Haryana Real Estate Regulatory Authority under Rule 5 (1) of the Haryana Real Estate (Regulation & Development) Rules, 2017, notified by the Government of Haryana under sub-section (1) read with sub-section (2) of Section 84 of the Real Estate (Regulation & Development) Act, 2016, on 28.07.2017 the following provision has been made:-

“2 (iv) The promoter shall deposit seventy percent of the amounts realized by the promoter in a separate account to be maintained in a scheduled bank to cover the cost of construction and the land cost to be used only for that purpose as per sub-clause (D) of clause (1) of sub section (2) of Section 4.”

Therefore, the Respondent was required to maintain separate bank accounts from which the DGAP can obtain details of the payment schedule, turnover and taxes charged in respect of the each project. The Respondent is also required to submit returns to the above Authority intimating the expenditure and the progress

made in construction of every separately registered project. Hence, the above claim of the Respondent is fallacious, wrong and incorrect. Therefore, his above contention cannot be accepted. Accordingly, the profiteering computed by the DGAP on the basis of the information supplied by the Respondent cannot be relied upon. Therefore, the Report dated 27.03.2020 furnished by the DGAP cannot be accepted and accordingly, the DGAP is directed to further investigate the matter under Rule 133 (4) of the above Rules, after collecting all the necessary evidence including the evidence which is available with the Haryana Real Estate Regulatory Authority. Needless to say that the DGAP shall use all means including the coercive action as per the provisions of Rule 132 of the above Rules to compel the Respondent to produce the authentic and reliable details/information on the basis of which profiteered amount shall be computed afresh. The investigation shall be conducted w.e.f. 01.07.2017 to 30.11.2020 or till the date when the Respondent has obtained the OC whichever is earlier and fresh Report shall be filed as per the provisions of Rule 129 (6). The Respondent is also directed to provide all assistance to the DGAP while conducting further investigation.

38. A copy of this order be sent to the Applicants and the Respondent. A copy of this order be also sent to the Secretary, Haryana Real Estate Regulatory Authority, Gurugram with the

request to render all assistance to the DGAP in conducting the investigation. File of the case be consigned after completion.

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

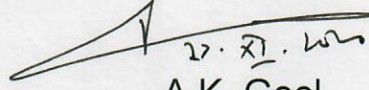


Sd/-
(Dr. B. N. Sharma)
Chairman

Sd/-
(Amand Shah)
Technical Member

Certified Copy

o/c


A.K. Goel

(Secretary, NAA)

File No. 22011/NAA/159/Logixcity/2020/6258-62 Date: 27.11.2020

Copy to:-

1. M/s Logix City Developers Pvt. Ltd., A-4&5, Sector-16, Noida-201301.
2. Shri Sibi John, G-246, First Floor, Sector-10, Faridabad, Haryana-121006.
3. Directorate General of Anti-Profiteering, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai ViR Singh Marg, New Delhi-110001.
4. Secretary, Haryana Real Estate Regulatory Authority, Gurugram, Civil Lines, Gurugram, Haryana-122001.
5. Guard File.



A. K. GOEL
SECRETARY, NAA