

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

I.O.	30/2020
Date of Institution	16.04.2020
Date of Order	27.11.2020

In the matter of:

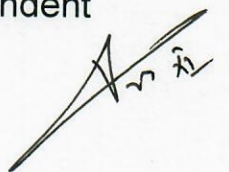
1. Mrs. Aruna Popat, Resident of 6, Shriji Apartments, Tikekar Road, Dhantoli, Nagpur, Maharashtra-440012.
2. Director-General of Anti-Profiteering, Central Board of Indirect Taxes & Customs, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.

Applicants

Versus

M/s Shalwak Infrabulls, Shalwak Regency, 201, Dahake Plot No. 8, Near Square, Khare Town, Dharampeth, Nagpur, Maharashtra-440010.

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 23.03.2020 has been received from Applicant No. 2 i.e. the Director-General of Anti-Profiteering (DGAP) on 16.04.2020 after an investigation under Rule 129 (6) of the Central Goods & Service Tax (CGST) Rules, 2017. The brief facts of the case are that an application was filed before the Standing Committee on Anti-profiteering under Rule 128 (1) of the CGST Rules, 2017, in which the Applicant No. 1 had alleged profiteering by the Respondent in respect of the purchase of Flat in his project "Shalwak Elite" located at Nazool Plot No. 11, City Survey No. 358, Dr. Munje Marg, Mouza-Dhantolion, Nagpur, Maharashtra. Applicant No. 1 had alleged that the Respondent had not passed on the benefit of Input Tax Credit (ITC) availed by him by way of commensurate reduction in the price of the flats. The aforesaid application was considered by the Standing Committee on Anti-profiteering in its meeting and it was decided to

forward the same to the DGAP to conduct a detailed investigation into the allegation made in the complaint according to Rule 129 (1) of the CGST Rules, 2017, which was received by the DGAP in this regard on 09.10.2019.

2. On receipt of the recommendation from the Standing Committee on Anti-profiteering, the DGAP had issued a Notice dated 23.10.2019 under Rule 129 of the above Rules, asking the Respondent to intimate 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 the prices of the flats and in case it was so, to suo-moto compute the quantum of the same and mention it in his reply to the Notice along with the supporting documents. The Respondent was allowed to inspect the non-confidential evidence/information furnished by Applicant No. 1 during the period between 31.10.2019 to 01.11.2019 in accordance with Rule 129 (5) of the above Rules but the Respondent did not avail of the said opportunity. Vide e-mail dated 24.02.2020, the above Applicant was also allowed to inspect the non-confidential documents/reply submitted by the Respondent on 26.02.2020. However, the Applicant vide email dated 25.02.2020 submitted that due to advanced age, she was unable to visit the DGAP's office. She also submitted that she had received a total Input Tax Credit benefit of Rs. 40,000/- and requested to treat the matter as closed.
3. The DGAP has covered the period from 01.07.2017 to 30.09.2019 during the current investigation.
4. The DGAP has reported that the Respondent had submitted his replies vide letters/emails dated 07.11.2019, 22.11.2019, 29.11.2019,

10.01.2020, 13.01.2020, 14.01.2020, 17.01.2020, 23.01.2020, 13.02.2020, 14.02.2020, 21.02.2020, 25.02.2020 and 28.02.2020. The submissions made by the Respondent are, interalia, as follows-

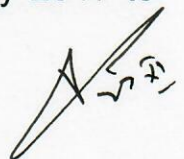
- a) That he had commenced his only project, namely 'Shalwak Elite' by entering into the Agreement of Development & Sale on 19th July 2013;
- b) That this Agreement had been entered by this firm 'Shalwak Elite' with the landowners, i.e. Smt. Malti Madhukar Vaidya & Shri Makrand Madhukar Vaidya;
- c) That even though the project was started on 19.07.2013, he had not received any booking for the project till 30.03.2017 and that the first 'agreement to sell' was entered into by him on 30.03.2017 for a consideration of Rs. 70,00,000/- (Rupees Seventy Lakh only).
- d) That based on his abovementioned first agreement to sell, he had applied for Registration under the Maharashtra Value Added Tax Act, 2002 (MVAT Act 2002) & under the Service Tax laws; that he had been issued registration under the MVAT Act on 29.04.2017 while his Service Tax Registration was issued on 04.05.2017;
- e) That the Second Agreement to Sell in the context of the project was entered on 15.04.2017 with Mrs. Aruna Popat for consideration of Rs. 93,00,000/- (Rupees Ninety Three Lakh only).



- f) That apart from these two bookings, all the other flats/ units in the project, were sold only after the occupancy/completion of the project i.e. after 15.03.2018.
- g) That during the period from 01.04.2017 to 30.06.2017, he paid Rs. 5,44,000/- @4.5% as his total service tax liability and Rs. 1,63,000/- @1% as VAT under the MVAT Act.
- h) That during the post- GST period from 01.07.2017 to 15.03.2018, he had received Rs. 42,00,000/- (Rupees Forty-Two Lakh only) from the Applicant No. 1, on which he had discharged his GST liability of Rs. 5,04,000/- (Rupees Five Lakh Four Thousand only) @ 12%; and that he had claimed and utilized an amount of Rs. 57,318/- as the input tax credit (ITC) thereon.
- i) That the balance unutilized ITC was reversed by him vide his GSTR-3B return for December 2019.
- j) That he has not profiteered in respect of the said project since he has passed on the ITC benefit to, the Applicant No. 1, and that she (Applicant No.1) has withdrawn her complaint voluntarily as the complaint had been made due to a misunderstanding.

5. The DGAP has reported that during the course of the investigation, the Respondent also furnished the following documents/information to the DGAP vide his above-mentioned letters/e-mails:-

- (a) Copies of his GSTR-1 Returns for the period from July 2017 to September 2019.



- (b) Copies of his GSTR-3B Returns for the period from July 2017 to September 2019.
- (c) Copy of his Tran-1.
- (d) Copies of Registration Certificate obtained by him under the Service Tax laws and the MVAT Act.
- (e) Copies of his VAT Returns (including all annexures) & ST-3 Returns for the period from April 2017 to June 2017.
- (f) Copies of all the demand letters issued by him and the sale agreements entered by him with the Applicant and other homebuyers.
- (g) Copies of his Balance Sheet for FY 2016-17, 2017-18 & 2018-19.
- (h) Copies of his Profit & Loss Account for FY 2016-17, 2017-18, and 2018-19.
- (i) Copy of his Electronic Credit Ledger for the period from 01.07.2017 to 30.09.2019.
- (j) Details of VAT, Service Tax, ITC on VAT, CENVAT Credit for the period April 2016 to June 2017, and Output GST and ITC of GST for the period July 2017 to September 2019 for the project "Shalwak Elite".
- (k) List of the homebuyers of the project "Shalwak Elite" along with details of the ITC benefit passed on by him to them.
- (l) Copy of the Maharashtra RERA Registration Certificate of the Project "Shalwak Elite".
- (m) Copies of the Occupancy Certificates issued in respect of the said project.

- (n) Copy of the letter issued to him by Applicant No. 1 evidencing the receipt of ITC benefit amounting to Rs.40,000/-.
6. The DGAP has reported that the case records were carefully examined by him and it was found that the main issue for determination was as to whether there was a reduction in the rate of tax or benefit of ITC on the supply of construction service by the Respondent after implementation of the GST w.e.f. 01.07.2017 and in case it was so, whether the Respondent had passed on the above benefit to the home buyers as per the provisions of Section 171 of the CGST Act, 2017 or not.
7. In his Report, the DGAP has interalia reported that –
- a) the Respondent has claimed that he has already passed on the benefit of Input Tax Credit to the Applicant No.1 and that Applicant No. 1 has withdrawn her complaint;
 - b) Applicant No. 1, vide her letter dated 13.11.2019, has submitted before the DGAP that she had received the proportionate share of the ITC benefit in respect of her flat in the project 'Shalwak Elite' and that she has unconditionally withdrawn her complaint against the Respondent.
 - c) The fact that the Respondent has passed on the benefit of Input Tax Credit to Applicant No. 1 has been verified.
8. The DGAP has further reported that in terms of Rule 129 of the CGST Rules 2017, the DGAP was bound by his statutory obligation to complete an investigation once a reference has been received by him from the Standing Committee on Anti-Profiteering. The DGAP has

added that no legal provision permitted closure of an investigation, once it has been initiated, despite the withdrawal of the complaint by an Applicant. Thus, in the instant case, the proceedings that had been initiated on the application made by Applicant No. 1, could not be discontinued based on the subsequent request received from Applicant No. 1 seeking withdrawal of her Application/ complaint.

9. Further, the DGAP has reported that the Respondent has submitted that out of the total 12 units in the said project, 02 units were retained by the landowners/ plot owners, i.e. Smt. Malti Madhukar Vaidya and Mr. Makrand Madhukar Vaidya, as per the Development Agreement dated 19.07.2013 entered by him with him while one unit remained unsold. Out of the remaining 9 units, 7 units were sold after the date of issuance of Occupancy Certificate, i.e. 15.03.2018. The DGAP has added that in support of his above contention, the Respondent has submitted a copy of the RERA Registration Certificate of his project 'Shalwak Elite' and Customer Sale Deeds in respect of all the homebuyers detailing their payment plans.

10. The DGAP has further reported that para 5 of Schedule-III of the CGST Act 2017 provides that no GST is leviable in respect of the 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, where the entire consideration has been received after issuance of the completion certificate, where required, by the competent authority or after its first occupation, whichever was earlier" as such a transaction was to be treated neither as a supply of goods nor a supply of services. Thus, the ITC pertaining to those residential

units, which were under construction but not sold, was provisional, as it might be required to be reversed in terms of Section 17(2) & Section 17(3) of the Central Goods and Services Tax Act, 2017 which read as under:

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

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

Further, the manner of determination of ITC in respect of input services and reversal thereof has been laid down in Rule 42 of the CGST Rules, 2017, and the relevant portion of the said Rule is reproduced below:-

- (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), (i a), (i b), (i c) or (i d), 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:

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

The values for the above variables are:

$$E= 801.68 \text{ Sq Mtr.}$$

$$F= 1192.20 \text{ Sq Mtr.}$$

$$C2= \text{Rs. } 2,07,142/-$$



$$D1 = (801.68/1192.20) * 207142 = \text{Rs. } 1,39,290/-$$

DGAP has added that therefore the Respondent was required to reverse proportionately, the benefit of additional input tax credit available to him post-GST in respect of the unsold units as on the date of issuance of Occupancy Certificate to the tune of Rs. 1,39,290/-. DGAP has further reported that the Respondent, vide his reply dated 17.01.2020, submitted the Electronic Credit Ledger for the period from 01.01.2020 to 10.01.2020, which showed that he had reversed ITC amounting to Rs. 1,51,688/-.

11. As regards the allegation of profiteering, the DGAP has reported that the Respondent, vide his email dated 13.01.2020, has claimed that the benefit of input tax credit had been duly passed on by him to the above applicant. Further, the Respondent has furnished a copy of a letter dated 23.02.2020 issued by the Applicant which shows that that benefit amounting to Rs.40,000/- has been passed on by him to the Applicant and the said amount worked out to 0.95% of the amount collected from the above applicant in the post-GST period. In this context, the DGAP has reported that quantification of the correct quantum of profiteering has to be computed based on the input tax credit available to the Respondent and the taxable amount received by him from the Applicant and other recipients in the post-GST period.

12. The DGAP has reported that in the period before the introduction of GST, the Respondent was eligible to avail CENVAT credit of Service Tax paid on input services and credit of the VAT amount paid on the purchase of inputs. However, the CENVAT credit of the amount of

Central Excise Duty paid on inputs was not admissible as per the CENVAT Rules in force at the material time. The Respondent had got registered under the Service Tax laws on 04.05.2017 and under the VAT laws on 29.04.2017. From the Statutory returns furnished by the Respondent, it was found that the Respondent had not availed CENVAT credit of Service Tax paid on input services. However, ITC on the VAT paid by him on the purchase of inputs for the period April 2017 to June 2017 has been availed by the Respondent although he was not eligible for availing the ITC of VAT, having opted for the composition scheme under MVAT Act, 2002. Further in the post-GST period after 1.07.2017, the Respondent became eligible to avail input tax credit of the GST paid by him on inputs and input services, including sub-contracts. From the information submitted by the Respondent, duly verified from the GSTR-1 and GSTR-3B Returns for the period from April 2016 to June 2017 and July 2017 to September 2019, the details of the input tax credit availed by him, the ratio of ITC to taxable turnover for the project "Shalwak Elite" during the said periods are furnished in Table-A below.

13.

Table-'A'(Amount in Rs.)

S. No.	Particulars	April 2016 to March 2017	April 2017 to June 2017	Total (Pre-GST)	July 2017 to March 2018	April 2018 to August 2018	Total (Post-GST)
(1)	(2)	(3)	(4)	(5)=(3)+(4)	(6)	(7)	(8)=(6)+(7)
1	CENVAT of Service Tax Paid on Input Services as per ST-3 (A)	-	-	-	-	-	-
2	CENVAT of VAT on purchase of inputs as per VAT return(B)	-	-	-	-	-	-
3	Input Tax Credit of GST Availed as per GST Return (C)	-	-	-	2,07,142	-	2,07,142
4	Total Taxable Turnover as per Returns (D)	-	1,21,00,000	1,21,00,000	42,00,000	-	42,00,000
5	Total Saleable Area of apartments in the project (Square Ft.) (E)			1,192.20			1,192.20
6	Area Sold relevant to Taxable turnover as per returns (F)			200.42			100.21
7	Relevant CENVAT/Input Tax Credit (G)= [(B)*(F)/(E)] or [(C)*(F)/(E)]			-			17,411

8	Ratio of CENVAT/ Input Tax Credit to Taxable Turnover [(H)=(G)/(D)]	0	0.41%
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14. From the above Table-‘A’, it was 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 nil and during the post-GST period (July 2017 to September 2019), it was 0.41%. This confirmed that in the post-GST period, the Respondent has benefited on account of the additional input tax credit by 0.41% of his taxable turnover.

15. The DGAP has stated that, accordingly, the quantification of profiteering has been arrived at by comparing the applicable tax and input tax credit available for the pre-GST period (April 2016 to June 2017) when Service Tax @4.5% and VAT @1% was payable with the post-GST period (July 2017 to August 2018) when the effective GST rate was 12% (GST @18% along with 1/3rd abatement on value) on construction service, vide Notification No.11/2017-Central Tax (Rate), dated 28.06.2017. Based on the figures contained in Table-‘A’ above, the comparative figures of input tax credit availed/available during the pre-GST period and the post-GST period are tabulated in Table-‘B’ below:-

Table-‘B’			(Amount in Rs.)	
S. No.	Particulars		Pre-GST	Post- GST
1	Period	A	April 2016 to June 2017	July 2017 to August 2018
2	Output tax rate (%)	B	5.50%	12.00%
3	The ratio of CENVAT/ Input Tax Credit to Taxable Turnover as per Table - B above (%)	C	0.0%	0.41%
4	Increase in tax rate post-GST (%)	D= 12% less 5.50%	-	6.50%
5	Increase in input tax credit availed post-GST (%)	E= 0.41% less 0.00%	-	0.41%
6	Analysis of Increase in input tax credit:			
7	Base Price collected during July, 2017 to September, 2019	F		42,00,000
8	Less: Units Cancelled	G		-
9	Net Base Price collected from July 2017 to June 2018	H=F-G		42,00,000
10	GST Collected @ 12% over Basic Price	I= H*12%		5,04,000
11	Total Demand collected	J=H+I		47,04,000
12	Recalibrated Basic Price	K= H*(1-E) or 99.59% of H		41,82,780
13	GST @12%	L= K*12%		5,01,934
14	Commensurate demand price	M= K+L		46,84,714
15	Excess Collection of Demand or Profiteering Amount	N= J - M		19,286

16. Citing the above Table 'B', the DGAP has reported that the additional ITC of 0.41% of the taxable turnover implied the need for a commensurate reduction in the base prices of the units/ flats as well as a commensurately reduced cum-tax price. Therefore, in terms of Section 171 of the Central Goods and Services Tax Act, 2017, the benefit of the additional input tax credit was required to be passed on to the recipients. The DGAP has further stated that keeping in view the homebuyers list, it was found that out of the total 12 units, 2 units, Unit No. 101 and 102 have been retained by the landowners i.e. Smt Malti Madhukar Vaidya and Shri Makarand Madhukar Vaidya as per the Development Agreement dated 19th July 2013. Out of the remaining 10 units, the Respondent has sold two units before issuance of Occupation Certificate, i.e. Unit No. 201 and 202 which had been booked before the introduction of the GST regime, while the remaining 8 units were sold by the Respondent only after the issue of Occupancy Certificate.

17. The DGAP has further stated that No. 201 and partial consideration for Unit No. 202 was received by the Respondent in the pre-GST period and the total Service Tax and VAT liability thereon has been duly discharged by the Respondent. Further, in respect of Unit No. 202, the Respondent raised total demand of Rs. 42,00,000/- (on the Applicant No. 1) and availed ITC amounting to Rs. 2,07,142/- in the period from July 2017 to September 2019. Further, the Respondent received the Occupancy Certificate on 15.03.2018 and reversed the balance ITC, as verified in the Electronic Credit Ledger for the month

of January 2020. Based on the above facts, the amount of benefit of ITC not passed on, or in other words, the profiteered amount comes to Rs.19,286/- which included 12% GST on the base profiteering amount of Rs.17,220/- for the period from 01.07.2017 to 30.09.2019. The DGAP has added that the Respondent had claimed that he had passed on an amount of Rs. 40,000/- (i.e. 0.95% of the amount collected post-GST) to the Applicant No.1 and that the said claim has been duly verified. The DGAP also observed that the Respondent had supplied the construction services in the State of Maharashtra only.

18. The DGAP had further reported that the benefit of the additional ITC amounting to 0.41% of the taxable turnover had accrued to the Respondent and the same was required to be passed on to the above Applicant. The DGAP had also reported that as the Respondent had suo-moto passed on Rs. 40,000/- which worked out to 0.95% of the taxable turnover, no further dues towards profiteering were required to be paid by the Respondent.

19. The DGAP had concluded that the provisions of Section 171(1) of the Central Goods and Services Tax Act, 2017 requiring that "a reduction in the 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", did not merit to be invoked against the Respondent in the present case since the benefit had already been passed on by the Respondent.



20. The above Report of the DGAP was considered by the Authority in its meeting held on 05.05.2020 and it was decided that the Applicants and the Respondent be asked to appear before this Authority on 18.05.2020. The Respondent was issued a Notice on 05.05.2020 to explain why the above Report of the DGAP should not be accepted and his liability for violating the provisions of Section 171 of the CGST Act, 2017 should not be fixed and a copy of the Notice was also supplied to the Applicant No. 1. However, in the wake of the Covid19 pandemic outbreak and the subsequent lockdown in Delhi, the hearing scheduled on 18.05.2020 could not be held. Consequently, the Respondent was directed to submit his consolidated submissions against the Report of the DGAP by 19.06.2020. In response thereto, the Respondent vide his e-mail dated 18.06.2020 requested additional time to make his submissions, Which was granted accordingly.

21. The Respondent, vide his email dated 23.09.2020, submitted that the Report of the DGAP dated 23.03.2020 was acceptable to him and that the benefit as determined by the DGAP will be passed on by him to all the homebuyers. Further, vide his email dated 20.10.2020, the Respondent has submitted that he has not yet collected any GST from the landowners. He has further stated that, as yet, he has neither executed the 'Deed of Apartment' with the landowners nor handed over the possession of the flats to the landowners. Further, he has stated that as per his own calculation, he was liable to pass ITC amounting to Rs.10,976/- to the landowners and that he would pass on

the said amount by way of adjusting the same against the amount receivable by him from the landowners by reducing the demand.

22. The Authority, vide Order dated 14.10.2020, directed the DGAP to file clarification under Rule 133(2A) of the CGST Rules, 2017 on the following issues by 22.10.2020, seeking to:

- (i) Clarify, after verification, the different units of the area referred to in the DGAP Report and its Annexures.
- (ii) Clarify the Scheme of VAT and VAT applicable to the project in the pre-GST period since the Report was not clear on this issue.
- (iii) Ascertain the reason for taking the total saleable area of post GST period less than the Pre-GST Period.
- (iv) Clarify how the additional ITC in respect of units retained by the Landowners has been treated.

23. In response to this Authority's Order dated 14.10.2020, the DGAP submitted his point-wise clarifications dated 17.11.2020 under Rule 133(2A) of the CGST Rules, 2017 which are re-stated as under:-

- (i) In the report dated 23.03.2020, while mentioning the unit for Total Saleable Area of the project (Row 5 of Table A), due to oversight, it had been wrongly mentioned as Feet² instead of Meter². The unit of area in the present case was Meter². However, as the unit for the area used in the computation has been consistent across the calculation and no conversion across the different units of area

has been done, there would be no impact on the calculation of profiteering due to the inadvertent error in mentioning the unit of area as square feet instead of square Meter.

- (ii) This issue has been dealt with in detail in para 16 of the Original Report dated 23.03.2020. It is once again reiterated that the Respondent had opted for Composition Scheme under MVAT Act, 2002, wherein credit of VAT was not admissible and hence, the Respondent was not eligible for any credit of VAT.
- (iii) The total saleable area in both the periods, Pre-GST and Post-GST was the same i.e. 1192.2 meter² (inadvertently mentioned as 1192.20 Feet²). Further, in the pre-GST era, there were only two bookings in the Respondent's project, wherein the respondent had raised demand or received advance. Out of these two, for the first unit, total consideration was received in the pre-GST period itself and Service Tax liability was discharged on it. Accordingly, the area of these two units shall constitute Area Sold/Area relevant to the turnover i.e. Row 6 of Table A. in the post-GST period, before the receipt of O.C, the Respondent had raised demand/received advances from the other home-buyer only. Accordingly, for the post-GST period, the area of this unit only would comprise The Area Sold/Area relevant to the other turnover i.e. Row 6 of Table A for the impugned period. Accordingly, the area relevant to turnover in the post-GST period was lesser than that in the pre-GST period. These figures were all based upon the actual data and any oversight in 'unit of area' shall have no impact on the calculation of profiteering.

- (iv) This point had been duly covered in para 14 of this office report dated 23.03.2020. As provided under Rule 42 of the Central Goods and Service Tax Rules, 2017, Input Tax Credit in respect of unsold units before the receipt of Occupancy/Completion Certificate whether retained by the developer or handed over to landowners has to be reversed. It is reiterated that the Respondent has reversed the Credit towards unsold units to the tune of Rs.1,51,688/- under Rule 42, whereas the Respondent was required to reverse credit amounting to Rs.1,39,290/- only.
24. Neither Applicant No. 1 nor the Respondent availed of the opportunity of hearing however, the Respondent made his submissions vide email dated 24.09.2020 and submitted that the Report furnished by the DGAP dated 23.03.2020, was acceptable to him and as per his calculation, he was liable to pass on the ITC benefit amounting to Rs.10,976/- and he would pass on the amount by way of short demanding the amount receivable from the Landowners.
25. We have carefully considered all the submissions filed by the Applicants, the Respondent, and the other material placed on record and find that the Applicant No. 1, vide her complaint, had alleged that the Respondent was not passing on the benefit of ITC to her on purchase of the flat, which she had purchased in the "Shalwak Elite" Project being executed by the Respondent in Nagpur, Maharashtra, even though he was availing ITC on the purchase of the inputs at the higher rates of GST which had resulted in the benefit of additional ITC to him and was also charging GST from her @12%. The complaint was examined by the Standing Committee in its meeting and was

forwarded to the DGAP for investigation under Rule 129 (1) of the above Rules. The DGAP vide his Report dated 23.03.2020 had found that the Respondent had profited an amount of Rs. 19,286/- by not passing on the ITC benefit to Applicant No. 1. The DGAP has further stated that the Respondent had claimed to have passed on the ITC benefit of Rs. 40,000/- to the above Applicant. This Authority had issued Notice dated 05.05.2020 to the Respondent to appear before the Authority for hearing. During the course of the hearing, the Respondent has claimed that he had already passed on the benefit of Rs. 40,000/- to the above Applicant. The DGAP in its Report dated 23.03.2020 has also stated that he has duly verified the claim made by the Respondent.

26. It is clear from the perusal of the above Reports that the DGAP has computed the ratio of CENVAT to the turnover for the pre GST period and compared it with the ratio of ITC to the turnover for the post GST period and then computed the percentage of the benefit of additional ITC which the Respondent is required to pass on to the flat buyers. The above ratios have been computed by the DGAP based on the Service Tax and GST Returns filed by the Respondent during both the above periods and the ITC Registers maintained for the above periods by him and hence, the ratios calculated by the DGAP are based on the factual record submitted by the Respondent and therefore, they can be relied upon while computing the profited amount. The Respondent has also not raised any objection against the methodology employed by the DGAP while calculating the above ratios. The above methodology has also been approved by this Authority in all the cases

where the benefit of ITC is required to be passed on. Therefore, the above methodology is appropriate, logical, reasonable, and in consonance with the provisions of Section 171 of the CGST Act, 2017.

27. However, the Respondent vide his letter dated 20.10.2020 has submitted before the Authority that till date he had not collected any GST amount from the landowners. Further, he has stated that he has neither executed the Deed of Agreement till date nor given possession of flats to the landowners and as per his calculation he was liable to pass on the Input Tax Credit amounting to Rs.10,976/- and he would pass on the remaining amount of ITC benefit to the landowners by way of Short demanding the amount receivable from the Land Owner.
28. Whereas, it is pertinent to mention here that the Respondent has specifically admitted the profiteering in respect of landowner's flats however, the DGAP had restricted his investigation to the home buyers only and failed to investigate the profiteering in the case of flats allocated to landowners.
29. Therefore, this Authority hereby directs the DGAP to re-investigate the matter under Rule 133 (4) of the CGST Rules, 2017 on the following issues:-
- i. Whether the landowners have received their share of flats from the developer.
 - ii. Whether the Respondent has not collected GST from the landowners as claimed by the Respondent.
 - iii. Whether the Respondent is liable to pass on Input Tax Credit benefit amounting to Rs.10,976/- to the landowner.



30. These issues in need to be appropriately addressed by way of revisiting the investigation in the interest of justice. Since the profiteering in respect of units belonging to landowners has not been considered in the DGAP Report dated 23.09.2020 . This Authority, under the powers conferred on it vide Rule 133(4) of the CGST Rules read with Section 171 (2) of the CGST Act 2017, directs the DGAP to reinvestigate this case and recompute the quantum of profiteering based on the above findings. While reinvestigating the matter on the above lines, all other contentions made by Respondent before this Authority during the course of the hearings may also be considered.
31. The DGAP shall submit his Report after reinvestigation on the above issues expeditiously. The Respondent is directed to extend all necessary assistance to the DGAP and furnish him necessary documents or information as required during the course of the investigation.
32. 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 16.04.2020 the order was to be passed on or before 15.10.2020. 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 was 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.

33. A copy of this order be supplied to all the parties and file of the case
be consigned after completion.

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

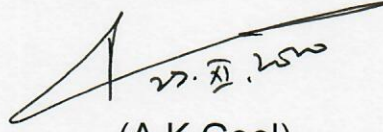
Sd/-
(J. C. Chauhan)
Member(Technical)



Sd/-
(Amand Shah)
Member(Technical)

Certified Copy

o/c


(A.K Goel)
NAA, Secretary

File No. 22011/NAA/156/Shalwak/2020 /6263-I/a
Copy To:- - 6263-I/d

Dated: 27.11.2020

1. M/s Shalwak Infrabulls "Shalwak Regency" 201, Dahake Plot No. 08, Near Square, Khare Town, Dharampeth, Nagpur Maharashtra - 440010
2. 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.
3. Mrs Aruna Popat, Resident of 6, Shriji Apartments, Tikekar Road, Dhantoli, Nagpur - 440012
4. Guard File.


A. K. GOEL
SECRETARY, NAA