

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

Case No. 80/2020
Date of Institution 28.02.2020
Date of Order 09.12.2020

In the matter of:

1. Shri Devroop Guha, J 11, Top Floor, Street No.-3, Laxmi Nagar, New Delhi.
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

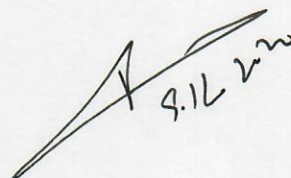
Versus

M/s Signature Global (India) Pvt. Ltd., Regd Office, 1304, 13th Floor, Dr. Gopal Das Bhawan, Barakhamba Road, Connaught Place, New Delhi-110001.

Respondent

Quorum:-

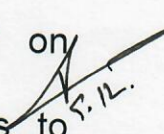
1. Dr. B. N. Sharma, Chairman
2. Sh. J. C. Chauhan, Technical Member
3. Sh. Amand Shah, Technical Member



Present:-

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

ORDER

1. The present Report dated 28.02.2020 has been received from Applicant No. 2, i.e. the Director-General of Anti-Profiteering (DGAP) after a detailed investigation in line with Rule 129 (6) of the Central Goods & Service Tax (CGST) Rules, 2017. The brief facts of the present case are that Applicant No. 1 had filed an application under Rule 128 of the CGST Rules, 2017 alleging profiteering by the Respondent in respect of the supply of purchase of Flat No. 7-405 in Tower 7 in Respondent's real estate project "**The Millenia 37D**" situated at Sector-37D, Gurugram, Haryana.
2. The DGAP has reported that Applicant No. 1 had alleged that the Respondent had not passed on the benefit of ITC to him by way of commensurate reduction in the price of his residential unit and that GST had been charged on the amounts due to him against payments to be made by him to the Respondent. Along with the application, Applicant No. 1 also submitted copies of demand letters issued by Respondent to him. On receipt of the aforesaid reference from the Standing Committee on Anti-profiteering on 09.10.2019, a Notice under Rule 129 of the Rules was issued by the DGAP on 22.10.2019, calling upon the Respondent to reply as to  S.12.

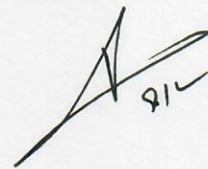
whether he admitted that the benefit of ITC had not been passed on to the recipients by way of commensurate reduction in price and if so, to suo moto determine the quantum thereof and indicate the same in his reply to the Notice as well as furnish all documents in support of his reply. Further, the Respondent was allowed to inspect the non-confidential evidence/information which formed the basis of the said Notice, during the period 30.10.2019 or 31.10.2019. However, the Respondent did not avail of the opportunity. Further, vide his e-mail dated 24.01.2020, Applicant No. 1 was also given an opportunity by the DGAP to inspect the non-confidential documents/reply furnished by the Respondent on 03.02.2020 or 04.02.2020. Applicant No. 1 availed of the said opportunity by visiting DGAP's office and inspecting and collecting the non-confidential documents on 04.02.2020. The period covered by the current investigation was from 01.07.2017 to 30.09.2019. The statutory time limit to complete the current investigation was on or before 08.04.2020 in terms of Rule 129(6) of the Rules.

3. DGAP has reported that in response to the notice dated 22.10.2019 the Respondent replied vide letter dated 26.11.2019 and his submissions were as follows:-

(i) That his case was a case of a company duly incorporated under the provisions of The Companies Act 1956. The Respondent was registered under the provisions of Haryana Value

Added Tax Act, 2003 w.e.f 01.04.2020. During the period 01.04.2016 to 30.06.2017, the Respondent was engaged in Trading of Building Material besides executing civil works contracts for several builders within the State of Haryana.

- (ii) That he had launched his first Affordable Housing Project namely "**The Millenia**" & allotted flats to the successful buyers on **27.10.2017** through a draw of lots under the scheme launched under the "Affordable Housing Policy 2013".
- (iii) That he had offered the rates for selling the residential units in his project, even before allotment, after due consideration of the GST paid/payable on goods & services involved in the execution of the contract as well as eligible GST credit, which could be set-off against output tax liability and the consideration for the sale of Flat was duly agreed between the Respondent and the buyer @ 4,000/- per sq. ft. on the carpet area, besides balcony area @ 500/- per sq. ft. Further, GST as applicable too was payable extra. The first Builder-Buyer agreement containing all the terms & conditions of Allotment was duly executed on **08.11.2017** between the Respondent and Applicant No. 1.



- (iv) That the construction activities on the aforesaid project were started on **25.09.2017** and hence during the GST regime.
- (v) That it was pertinent to state that in the real estate sector, the Anti- Profiteering provisions stipulated in Section 171 of CGST Act read with Rules 122 to 137 of the CGST Rules applied to those units where the Builder-Buyer agreements were executed before the introduction of GST, i.e. in cases where the transfer of property in goods/services was partly made in pre-GST regime and balance was paid after the introduction of GST, to ensure that the benefit of additional ITC made available to the service provider upon introduction of the GST regime, which was not available or was a part of the cost in earlier regime, was duly transferred/passed on to the buyers.
- (vi) That the Hon'ble Supreme Court in case of Larsen & Turbo Limited & others Vs State of Karnataka & other's (2013) 65 VST 1 (SC)=2014 1 SCC 708 held that *"The activity of construction undertaken by the developer etc. would be work contract only from the stage he entered into a contract with the flat purchaser."*



(vii) That all the events including the allotment of the Flats on **27.10.2017**, the agreement between him (the Respondent) & the Buyer duly executed on **08.11.2017** & construction activities started on **25.09.2017**, occurred within the GST regime. The transaction between the builder & the buyer was covered by clause (b) of paragraph 5 of Schedule II of the CGST Act from the date the buyer was allotted the flat i.e. 27.10.2017 or the date of signing of Builder-Buyer Agreement whichever was earlier. Hence, the anti-profiteering provisions under the CGST Act could be applied in his case.

(viii) That, since there was a reduction in the rate of GST from 12% (after accounting for the abatement of land cost) to 8% (after accounting for the abatement of land cost) vide Notification No. 01/2018 Central Tax-Rate dated 25.01.2018 under the provisions of GST law; the benefit of reduction of tax from 12% to 8 % had already been given to the buyers. Hence, the provisions of Anti-Profiteering laws did not apply in his case.

4. The DGAP has reported that the Respondent submitted the following documents/ information:

(a) Copy of the Registration of his project with the Haryana RERA.

(b) Copy of the first Builder-Buyer Agreement duly executed between him and the first homebuyer.

(c) Copy of his Agreement with his Contractor.

(d) Copy of the Environment Clearance for the subject project.

(e) Copy of the advertisement for the ' Draw of Lots.'

(f) Copy of the result of the draw of lots published in a leading newspaper;

(g) Copy of Ledger Account of Applicant No. 1.

5. DGAP has reported that vide DGAP's Notice dated 22.10.2019, the Respondent was informed that if any information/documents had been furnished by him to the DGAP on a confidential basis in terms of Rule 130 of the CGST Rules 2017, he was required to furnish a non-confidential summary of such information/documents. However, the Respondent did not classify any of the information/documents furnished by him before the DGAP as confidential in terms of Rule 130 of the Rules.

6. The DGAP has reported that the subject reference received from the Standing Committee on Anti-profiteering including the Application, the various replies of the Respondent, and the case records were carefully scrutinized. The main issues for determination were whether the Respondent had benefitted from the reduction in the rate of tax or by way of additional input tax credit (ITC) on his supplies upon implementation of GST with effect from 01.07.2017, and if so, whether such benefit

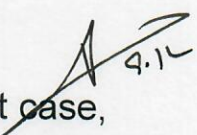
was passed on by him to the homebuyers/ recipients in terms of Section 171 of the Central Goods and Services Tax Act, 2017. The Respondent, vide his letter dated 26.11.2019, submitted a copy of the ledger account for Flat no. 7-405, Tower-7, Floor -4 that he had sold to Applicant No. 1. The said flat measured 552.36 sq. ft. (plus 79.65 sq. ft. of balcony area), at a total basic sale price of Rs. 22,49,265/- (@Rs. 4000/- basic sale price per sq. ft. for super buildup area of 552.36 sq. ft. and Rs. 500 per sq. ft. for balcony area). The details of amounts and taxes paid by Applicant No. 1 to the Respondent were furnished in Table-'A' below:-

Table-'A'

(Amount in Rs.)

Sl. No	Payment Stage	Due Date	Basic %	BSP	GST	Total	Rate of GST
A	B	C	D	E	F	G=E+F	H= F/E
1	At the time of Application	21.07.2017	5 %	1,12,463	13,496	1,25,959	12 %
2	At the time of Allotment	16.11.2017	20%	4,49,853	53,982	5,03,835	12 %

3	Within 6 months of Allotment	12	02.05.2018	12.50 %	2,81,158	22,492	3,03,650	8%
4	Within 12 months of Allotment	12	27.10.2018	12.50 %	2,81,158	22,492	3,03,650	8%
5	Within 18 months of Allotment	18	27.04.2019	12.50 %	2,81,158	22,492	3,03,650	8%
6	Within 24 months of Allotment	24	31.10.2019	12.50 %	2,81,158	22,492	3,03,650	8%
7	Within 30 months of Allotment	30	Not yet Due	12.50 %	2,81,158	22,492	3,03,650	8%
8	Within 36 months of Allotment	36		12.50 %	2,81,158	22,492	3,03,650	8%
Total				100.00 %	22,49,264	2,02,430	24,51,694	9%

7. The DGAP has reported that in the context of the subject case,  4.12, the Haryana State Screening Committee, in its reference to the Standing Committee on Anti-profiteering, had stated that

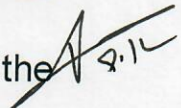
the allegation against the Respondent of not having passed on the benefit of reduced tax liability and the benefit of ITC under the GST regime needed further analysis in line with anti-profiteering provisions and accordingly the Standing Committee of Anti-profiteering had recommended a detailed investigation by the DGAP.

8. The DGAP has also reported that perusal of the Application revealed that Applicant No. 1 had applied for allotment of a residential flat in the impugned project vide Application No. 15050 and that the said project was being constructed as per the Haryana Affordable Housing Policy, 2013; that the draw of lots for allotment of flats was held on 27.10.2017 and consequentially, the Applicant No. 1 was allotted his residential flat; that, subsequently, the Agreement to sell was executed between the Respondent and Applicant No.1 on 26.11.2017 and the said flat was registered on 30.11.2017 at Gurugram.
9. The DGAP has further reported that during the course of the investigation, the Respondent has contended that Anti-profiteering provisions could not be applied to the project "The Millenia" as the said project was not in existence on the date of introduction of GST and that the said project had been launched much after 1.07.2017; that the draw of lots for allotment of flats was held only on 27.10.2017; that the Applicant No. 1 had made the payment of the security deposit for the above-mentioned draw of lots on 21.07.2017, i.e. after

1.07.2017.; that the Applicant No.1 was allotted his unit only on 01.11.2017; and that it was pertinent that all the events relating to the booking of flat in respect of Applicant No.1 had taken place after the GST regime had come into force.

10. The DGAP has further reported that scrutiny of the documents/ records furnished by the Respondent revealed that the environment clearance in respect of the subject project was issued to the Respondent only on 21.08.2017, subsequent only to which had the Respondent entered into his agreement with the contractor for the construction of the project, i.e. on 22.09.2017. The DGAP has also stated that the draw of lots was held only on 27.10.2017 and that the first Builder-Buyer agreement was entered into only on 08.11.2017.
11. Based on the above chronology of events related to the subject project, the DGAP has reported that it was clear to him that the project 'The Millenia' was launched in the post-GST regime itself and that there was no price history of sale of units in the subject project in the pre-GST regime that could be compared with the Post-GST base price for computation of profiteering. The DGAP has further reported that as per para 5 of Annexure- A of Affordable Housing Policy 2013, notified by the Haryana Government on 19.08.2013, Rs. 4000/- per sq. ft. of carpet area (apart from the balcony area) has been fixed as the maximum allotment price for Gurugram. The DGAP has added that although this is the maximum price at which residential units constructed under the above Policy were

required to be sold, the supplier was free to fix his base price at any level subject to the ceiling of Rs. 4000/- per sq. ft.

12. The DGAP has reported that in the instant case, all activities related to the project had been initiated in the period after the introduction of GST, i.e. after 01.07.2017, hence, the provisions of Section 171 of the CGST Act do not apply to the instant case. He has also reported that examination of the issue of passing on the benefit arising out of the reduction in the rate of tax from 12% to 8% (after Land abatement) vide notification No. 01/2018 Central Tax-Rate dated 25.01.2018 w.e.f. 25.01.2018 was undertaken during the investigation and it was observed from the Ledger Account pertaining to Applicant No. 1 that the Respondent had correctly charged GST@ 12% for the period before 24.01.2018 and the reduced rate of 8% with effect from 25.01.2018 from Applicant No. 1 which evidenced that the Respondent had appropriately passed on the benefit of reduction in the rate of tax in line with the provisions of Section 171 of the Central Goods and Services Tax Act, 2017.
13. The DGAP has thus concluded that the allegation against the Respondent, of having profiteered by not passing on the benefit of the reduction in the rate of tax or benefit of ITC by way of commensurate reduction in prices, in terms of the provisions of Section 171(1) of the Central Goods and Services Tax Act, 2017, did not hold ground. The DGAP has further stated that in this proceeding, any reference to the 

Central Goods and Services Tax Act, 2017 and Central Goods and Services Tax Rules, 2017 also included a reference to the corresponding provisions under the relevant SGST/UTGST/IGST Acts and Rules.

14. The above mentioned Report of the DGAP was considered by this Authority in its sitting held on 03.03.2019 and it was decided to accord an opportunity of hearing to Applicant No. 1 on 23.03.2020 so that a reasoned and equitable order could be passed in this matter, which had arisen out of the Application filed by the Applicant No. 1 wherein it had been alleged that the Respondent had profiteered and contravened the provisions of Section 171 (1) of the above Act. However, Applicant No. 1 neither attended the hearing nor furnished any submissions on 23.03.2020. Therefore, in the interest of justice, this Authority accorded Applicant No. 1, three further opportunities of being heard on 23.06.2020, 21.09.2020, and 19.10.2020. However Applicant No. 1 did not appear before this Authority and also did not file any submissions in writing.
15. Meanwhile, this Authority, vide its Order dated 09.10.2020, directed the DGAP to clarify the reasons for having treated the subject project as one that had commenced in the post-GST period (i.e. after 01.07.2017) although the Licence for construction of the project had been issued on 02.02.2017 and the RERA registration certificate had been issued on 20.06.2017. The said clarification was sought by this Authority

in terms of Rule 133(2A) of the CGST Rules 2017 in the context of DGAP Report dated 28.02.2020

16. The DGAP, vide its Report dated 05.11.2020, submitted the chronology of the benchmark events relating to the impugned project, which is in the Chart below:-

CHART

S.No.	Date	Event
1	02.02.2017	Grant of License by the Director, Town and Country Planning Department, Haryana
2	20.06.2017	Issuance of registration certificate by the Haryana Real Estate Regulatory Authority
3	01.07.2017	Introduction of Goods and Services Tax
4	21.08.2017	Issuance of Environment Clearance Certificate
5	22.09.2017	Work order for construction to the contractor
6	25.09.2017	Construction activities started
7	27.10.2017	The draw of Lots conducted for allotment of Units
8	08.11.2017	First Builder Buyer Agreement entered b/w Respondent and the first homebuyer

17. Vide his Report dated 15.11.2020 the DGAP reiterated the comments made by him vide Para 13 of the DGAP Report dated 28.02.2020 and also quoted Notification No. 03/2019-Central Tax (Rate) dated 29.03.2019 for the definition of the ongoing project. He also reported the conditions for the

ongoing project as per the above Notification which are reproduced below:

- a) commencement certificate In respect of the project was required to be issued by the competent authority, has been on or before 30 June 2017, and It was certified by any of the following that construction of the project has started on or before 30 June 2017
 - (i) an architect or
 - (ii) a chartered engineer, or
 - (iii) a licensed surveyor.
- b) Where commencement certificate in respect of the project, was not required to be issued by the competent authority, it was certified by any of the authorities specified in sub clause (a) above that construction of the project had started on or before the 30 June, 2017.
- c) Completion certificate has not been issued or first occupation of the project has not taken place on or before the 30 June, 2017.
- d) Apartments being constructed under the project have been, partly or wholly, booked on or before the 30 June, 2017

18. The DGAP further submitted that in the impugned project "The Millennia".

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- (a) The date of commencement was 21.08.2017 (date of receipt of environment clearance) in terms of Para-5.1 of the Agreement to sell entered by the Respondent.
- (b) The date of start of construction was 25.09.2017.
- (c) Completion certificate has not been issued as first occupation has not taken place on or before the 30th June, 2017.
- (d) The date of first booking made in the impugned project was on 08.11.2017 (Date of Draw is 27.10.2017).

The DGAP reported that since the three conditions (a, b & d) were not fulfilled, the impugned project "The Millennia" was not an ongoing project as on 30.06.2017 and was launched in post-GST regime from the GST point of view.

19. The DGAP also referred to the definition of works contract existing in section 65B of the Finance Act, 1994 and under the Central Goods and Services Act, 2017 and submitted that on perusal of the definition of works contract in the respective Acts, projects got covered under works contract and the related profiteering provisions, once the following requisite elements were fulfilled: -

- (i) There should be transfer of property in goods and service:
- (ii) There should be exchange of consideration.
- (iii) There should be two or more parties to the agreement.
- (iv) There should be an immovable property under contract

He also submitted that in the present case, except for existence of immovable property, which till 30.06.2017 was

not under contract with the home buyers, the other elements were found missing.

20. The DGAP also stated that grant of License by the Director, Town and Country Planning Department, Haryana and registration certificate by the Haryana Real Estate Regulatory Authority were the requirements to comply with the relevant laws being in force. Therefore, invoking of Anti-Profiteering provisions has no relation with the DG TCP's license or RERA registration date. He further reported that the following events were the determining factors in furnishing the Nil Report dated 28.02.2020.

- a. Allotment of dwelling unit was made on 27.10.2017.
- b. Builder Buyer Agreement containing the allotment terms was entered on 08.11.2017.
- c. Contract for construction of the project was executed on 25.09.2017.
- d. There was no Cenvat Credit/ITC availed by the Notices in pre-GST regime.

21. We have carefully considered the DGAP's Report dated 28.02.2020 and Supplementary Report dated 05.11.2020 and since after number of opportunities of hearings the Applicant No. 1 did not make any submissions we have no option other than proceeding ex-parte. We find that the following issues are required to be settled in the present proceedings:-

- I. Whether there is reduction in the rate of tax on the construction services as alleged by the Applicant No. 1 ?

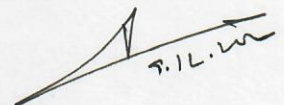
- II. Whether there is benefit of additional ITC available to the Respondent which is not passed on by him to the Applicant No. 1 ?
- III. Whether there is any violation of the provisions of Section 171 (1) of the CGST Act, 2017 by the Respondent?

Perusal of the record reveals that the Respondent had got Affordable Housing "The Millenia 37D" project approved under the Haryana Affordable Housing Policy and allotted flats to the successful buyers on 27.10.2017 through draw of lots. He invited applications for allotment of houses via advertisement in newspapers. The Applicant No. 1 had applied for allotment of a flat and the draw of lots for allotment of houses was conducted on 27.10.2017 in the presence of the committee constituted under the above Policy. It is also revealed that first builder buyer agreement was executed on 08.11.2017 vide which the terms and conditions for allotment of Flat were settled. It is also apparent from the record that the Respondent had received the Environment Clearance from the State Environment Impact Assessment Authority Haryana on 21.08.2017, also the work order for construction to contractor was given on 22.09.2017 before which he could not have started the execution of the project. On the basis of the sequence of the above events it could be safely concluded that the above project had been started after coming in to force of the GST w.e.f. 01.07.2017. It is also clear that the draw of lots for allotment was held on 27.10.2017. The first agreement between the buyer and the Respondent was executed on 08.11.2017. Therefore, it was

apparent that the Applicant No. 1 had applied for allotment and was allotted the above flat after coming in to force of the GST w.e.f. 01.07.2017. Since the above project was not under execution in the pre-GST period i.e. before 01.07.2017 therefore, no comparison could be made between the ITC which was unavailable to the Respondent before 01.07.2017 and after 01.07.2017 to determine whether the Respondent had benefitted from additional availability of ITC or not. From the above facts it are established that there had been no additional benefit of ITC to the Respondent and hence he was not required to pass on its benefit to the above Applicant No.1 by reducing the price of the flat. The Applicant No. 1 could have availed the above benefit only if the above project was under execution before coming in to force of the GST as the Respondent would have been eligible to avail ITC on the purchase of goods and services after 01.07.2017 on which he was not entitled to do so before the above date. Since there is no basis for comparison of ITC available before and after 01.07.2017, the Respondent was not required to recalibrate the price of the flat due to additional benefit of ITC. Hence, the allegations of the Applicant No.1 made in this behalf are incorrect and therefore, the same cannot be accepted.

22. The Perusal of Section 171 (1) of the CGST Act, 2017 shows that it reads as under:-

“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.”



It is clear from the above Section that there should either be reduction in the rate of tax or the benefit of ITC which are required to be passed on to the recipients by commensurate reduction in the price. Since there had been no reduction in the rate of tax or benefit of additional ITC to the Respondent the provisions of the above Section are not attracted in the present case and the allegation of profiteering are not established against the Respondent.

23. Based on the above facts it are established that the Respondent had not contravened the provisions of Section 171 (1) of the CGST Act, 2017 and we find no merit in the application filed by the above Applicant No.1 and the same are accordingly dismissed.

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

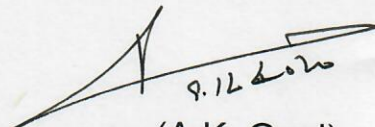
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(Dr. B. N. Sharma)
Chairman

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

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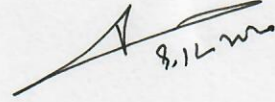

9.12.2020
(A.K. Goel)
Secretary, NAA

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Copy To:-

Dated: 09.12.2020

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1. M/s Signature Global (India) Pvt. Ltd., Regd. Office, 1304, 13th Floor, Dr.Gopal Das Bhawan, Barakhamba Road, Connaught Place, New Delhi-110001.
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. Sh. Devroop Guha, Top Floor, Street No. 3, Laxmi Nagar, New Delhi
4. Guard File/NAA Website.



8.12.20