

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

Case No.	86/2020
Date of Institution	10.06.2020
Date of Order	11.12.2020

**In the matter of:**

Director General of Anti-Profiteering, Central Board of Indirect Taxes & Customs, 2<sup>nd</sup> Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.

Applicant

Versus

M/s. Caroa Properties LLP, Godrej One, 5<sup>th</sup> Floor, Pirojshanagar, Eastern Highway, Vikroli (East), Mumbai-400079.

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 DGAP
2. None for the Respondent.

ORDER

1. The present Report dated 08.06.2020 has been received from the Director-General of Anti-Profiteering (DGAP) after a 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 DGAP vide order No. 78/2019 dated 24.12.2019 passed by this Authority in the matter of M/s Caroa Properties LLP versus Potnoor Naveen was directed under rule 133(5) of the Central Goods and Services Tax Rules, 2017 to conduct investigation to find out whether the Respondent had availed the benefit of Input Tax Credit (ITC) which was required to be passed on to the eligible recipients as per the provisions of section 171(1) of the Central Goods & Service Tax (CGST) Act, 2017 in respect of two others projects namely "Golf meadows Godrej City Phase II" and "EWS".
2. The DGAP has reported that accordingly, he issued Notice to the Respondent on 08.01.2020 under Rule 129 (3) of the above Rules, calling upon him to reply as to whether he admitted that the benefit of ITC had not been passed on to the buyers 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 to

furnish all the supporting documents. The DGAP has also reported that the period covered by the current investigation was from 01.07.2017 to 31.12.2019 and the time limit to complete the investigation was extended up to 26.06.2020 by this Authority, in terms of Rule 129 (6) of the CGST Rules, 2017.

3. The Respondent had submitted his replies vide letters and e-mails dated 15.01.2020, 16.01.2020, 31.01.2020, and 29.04.2020. The replies of the Respondent have been summed up by the DGAP as follows:-

(a) That the sale of units of the project "Golf Meadows Godrej City, Panvel" was started in October 2018 and the sale of EWS units had not started till then. Accordingly, the above projects were outside the scope of the provisions of Section 171 of the CGST Act, 2017 since the above projects were launched in the GST regime and the same was also considered in the DGAP's Report dated 25.06.2019.

4. The Respondent vide his aforementioned letters, has also submitted the following documents/information:-

- a. Commencement Certificate for the project "Golf Meadows Godrej City, Panvel".
- b. Commencement Certificate for the Economically Weaker Section (EWS) building.
- c. RERA registration for the project "Golf Meadows Godrej City, Panvel".
- d. First Booking details of the project "Golf Meadows Godrej

City, Panvel” (including Builder Buyer Agreement).

e. Copy of Declaration made in Annexure-IV to the Notification No. 03/2019-Central Tax (Rate) dated 29.03.2019.

5. The DGAP after examining the above application, various replies of the Respondent and the documents/evidence on record has stated that the main issues for determination were whether there were benefits of reduction in the rate of tax or ITC on the supply of construction service by the Respondent after implementation of the GST w.e.f. 01.07.2017 and if so, whether the Respondent had passed on such benefits to the recipients by way of commensurate reduction in prices, in terms of Section 171 of the CGST Act, 2017. The Respondent has contended that anti-profiteering provisions did not apply to the project “Golf Meadows Godrej City, Panvel (Phase-II)” as the above project was not even in existence before the GST Implementation and had been launched for the first time in the GST regime on October 2018 and the sale of EWS had not started till date.
6. The DGAP has also observed that Commencement Certificate (CC) was issued to the Respondent on 07.09.2018 for the project “Golf Meadows Godrej City, Panvel (Phase-II)” and on 11.05.2018 for “EWS”. Further, Maharashtra Real Estate Regulatory Authority (RERA) had issued the RERA Registration Certificate No. P52000018146 to the Respondent on 11.10.2018 for the project “Golf Meadows Godrej City, Panvel (Phase-II)” with validity from 11.10.2018 to 31.12.2022, and the first booking was made on 02.11.2018 by Sh. Evgene Valles and Ms. Olive Valles for flat No. T2-1808. Further, the EWS units were currently not registered under

RERA and the Respondent has informed that he had not sold any EWS unit as of 31.12.2019. The DGAP has further observed that the projects "Golf Meadows Godrej City, Panvel (Phase-II)" and "EWS" had been launched in the post-GST regime and there was no price history of the units sold in the pre-GST regime that could be compared with the post-GST base price to establish whether there was any profiteering by the Respondent or not.

7. The DGAP has reported that the Respondent had availed CENVAT Credit of Service Tax during the period 01.04.2016 to 30.06.2017 (Pre-GST) specific to Godrej City Panvel Phase-1 and had apportioned the Common Credit among all the phases, EWS and commercial project (including projects not launched yet). The DGAP has examined the issue of passing on the benefit of 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 and observed that the above Notification was not applicable to the above projects of the Respondent since these were other than affordable projects. Further, the Respondent had made the first booking on 02.11.2018 which was after the entry into force of Notification w.e.f. 25.01.2018.
8. The DGAP has intimated that the Respondent had also submitted copy of the declaration dated 22.04.2019 filed in the office of Deputy Commissioner, CGST & Central Excise, Division-V, Navi Mumbai declaring that he had exercised the option of paying the tax on construction service at old rate i.e. 12% (GST @18% along with 1/3rd abatement for land value) with the input tax credit. Therefore

Notification No. 03/2019-Central Tax (Rate) dated 29.03.2019 was not applicable in respect of the other projects of the Respondent.

9. The DGAP has concluded that no profiteering was found in the case of the projects investigated in the instant investigation and therefore, Section 171(1) of the Central Goods and Services Tax Act, 2017 was not attracted against "Caroa Properties LLP" in the present case as all the events like the launch of projects, bookings and allotment of the flats had happened in the post GST era.
10. The above Report was received by this Authority from the DGAP on 10.06.2020 and was considered in its sitting held on 11.06.2020 and it was decided to accord an opportunity of filing submissions before this Authority to Sh. Potnoor Naveen on or before 06.07.2020 since no physical hearing was being held due to the Corona pandemic and subsequent lockdowns in Delhi. In response, Sh. Potnoor Naveen, vide his email dated 05.07.2020, submitted that he was completely in agreement with the DGAP's Report dated 08.06.2020. He also submitted before this Authority that the Respondent had not passed the ITC benefit to him and other flat buyers in compliance with this Authority's earlier order No. 78/2019 dated 24.12.2019. He has also attached the statement of accounts as evidence of not having received the benefit as yet.
11. This Authority has carefully examined the DGAP's Report and various submissions placed on record. The issues to be decided by the Authority are as under:-
- 1) Whether there was any violation of the provisions of Section 171 of the CGST Act, 2017 in this case?

2) If yes, then what was the quantum of profiteering?

12. This Authority has observed that the submissions of Sh. Potnoor Naveen were only relevant to the proceedings relating to Respondent's project "Godrej Panvel Township" that culminated in Order No. 78/2019 dated 24.12.2019 of this Authority and that since he was not a homebuyer in any of the projects investigated during the current proceedings, he was also not an interested party in the present case and as such has no locus-standi in the present case.
13. It is clear from a plain reading of Section 171(1) of the Act, *ibid*, that it deals with two situations, one relating to the passing on the benefit of reduction in the rate of tax and the second relating to the passing on of the benefit of the ITC to the recipients. On the issue of reduction in the tax rate, it is apparent from the DGAP's Report that there has been no reduction in the rate of tax in the post GST period, i.e. after 2017. Hence, the only issue to be examined is whether there was any benefit of ITC to the Respondent upon the introduction of GST. On this issue, the DGAP has reported that the Respondent had obtained the Commencement Certificate (CC) for the project "Golf Meadows Godrej City, Panvel (Phase-II)" on 07.09.2018 and for the project "EWS" on 11.05.2018. The DGAP has also verified that the project "Golf Meadows Godrej City, Panvel (Phase-II)" was registered on 11.10.2018 by Maharashtra RERA and the first booking in the above project was made on 02.11.2018. The DGAP has further observed that the project "EWS" was not registered under Maharashtra RERA and the Respondent had not sold any EWS unit as of 31.12.2019. The DGAP has further found that the projects "Golf Meadows Godrej

City, Panvel (Phase-II)" and "EWS" had been launched in the post-GST regime and there was no price history of the units sold in the pre-GST regime that could be compared with the post-GST base prices to establish whether there was any profiteering by the Respondent or not. In terms of the provisions of the RERA Act, bookings in the project could not happen till the registration was obtained. Since the registration was obtained for the subject projects post the introduction of Goods and Services Tax only, the provisions of Section 171 dealing with Anti-profiteering could not be made applicable to the said project in the view of the fact that there was no additional ITC that had been utilized by him, which was relevant for establishing any allegation of profiteering. Further, the Commencement Certificate of the above projects had been issued post-implementation of GST. It is clear from the DGAP Report that the Respondent had launched the subject projects in the post-GST regime and there wasn't any demand raised by the Respondent in the pre-GST regime. The registration and approval of the project and receipt of the payments had taken place in the post-GST regime and hence, there was no pre-GST tax rate or ITC which could be compared with the post-GST tax rate and ITC. On this basis, the DGAP has reported that the Respondent had neither benefited from additional ITC nor had there been a reduction in the tax rate in the post-GST period and therefore it did not qualify to be a case of profiteering.

14. We find no grounds in the case records to differ from the Report of the DGAP and we, therefore, agree with his findings that the



provisions of Section 171 of the CGST Act 2017 have not been contravened in this case.

15. Given our above findings, we conclude that the instant case does not fall under the ambit of Anti-Profiteering provisions of Section 171 of the CGST Act, 2017. Accordingly, the present proceedings ordered vide Order No. 78/2019 dated 24.12.2019 passed are dropped.

16. A copy each of this order be supplied to the Applicant, the Respondent for necessary action. File be consigned after completion.



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

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

Sd/-  
(Amand Shah)  
Technical Member

Certified Copy

(A. K. Goel)  
Secretary, NAA

File No. 22011/NAA/163/CaroaProp/2020/6453-55 Dated: 11.12.2020

Copy To:-

1. Shri Potnoor Naveen, B 503, B Wing, Gokuldham, Plot No. 3, Sec-35D, Kharghar, Navi Mumbai – 410210.
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.
3. M/s. Caroa Properties LLP, Godrej One, 5th Floor, Prirojshanagar, Eastern Highway, Vikroli (East), Mumbai-400079.
4. Guard File/NAA website.

A. K. GOEL  
SECRETARY, NAA