

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

I. O.	34/2020
Date of Institution	16.04.2020
Date of Order	11.12.2020

In the matter of:

1. Sh. Ashok Kumar Singh, 633/159, Gulzar Colony, Near Ayodhya Singh Inter College, Chinhat Tiraha, Lucknow- 227105.
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 Lifeways Infrastate Pvt. Ltd., 1st floor, Raja Ram Kumar Plaza-
75, Hazratganj, Lucknow, Uttar Pradesh -227105.

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.


11.12.2020

ORDER

1. The Report dated 23.03.2020, has been received on 16.04.2020 from Applicant No. 2 i.e. 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 case are that an application was filed by Applicant No. 1 before the Standing Committee on Anti-profiteering, under Rule 128 of the CGST Rules, 2017 alleging that the Respondent had not passed on the benefit of input tax credit (ITC) to him by way of commensurate reduction in the price of the Flat No. K-904 purchased from the Respondent in the project "Celebrity Garden Block-K", situated at Raja Ram Kumar Plaza-75, Hazratganj, Lucknow-226001 on the introduction of GST w.e.f. 01.07.2017, in terms of Section 171 of the CGST Act, 2017. The Standing Committee on Anti-profiteering examined the above application in its meeting held on 13.09.2019 and forwarded the same to the DGAP to conduct a detailed investigation in the matter.
2. Subsequently, the DGAP issued a notice of Investigation under Rule 129 of the CGST Rules on 23.10.2019 calling upon the Respondent to submit his reply whether he admitted that the benefit of ITC had not been passed on to Applicant No. 1 by way of commensurate reduction in price. The Respondent was also asked to suo moto determine the quantum thereof and indicate the same in his reply as well as furnish all supporting documents. Further, the Respondent was also allowed to inspect the non-confidential evidence/information furnished by Applicant No. 1

during the period 30.10.2019 to 31.10.2019 which was not availed of by him. Further, Applicant No. 1 vide e-mail dated 24.02.2020 was also allowed to inspect the non-confidential documents/reply furnished by the Respondent on 02.03.2020 or 03.03.2020, which the Applicant had not availed of. The DGAP has intimated that the period of the current investigation was from 01.07.2017 to 30.09.2019.

3. The DGAP has reported that the Respondent in response to the above Notice dated 23.10.2019, had submitted his replies vide letters and e-mails dated 12.11.2019, 13.11.2019, 02.12.2019, 24.12.2019, 16.01.2020, 17.02.2020, and 24.02.2020 wherein he had submitted the following documents/information: -

- a) Copies of GSTR-1 Returns for the period from July 2017 to September 2019.
- b) Copies of GSTR-3B Returns for the period from July 2017 to September 2019.
- c) Copies of VAT Returns (including all annexures) & ST-3 Returns for the period from April 2016 to June 2017.
- d) Copies of all demand letters issued and sale agreement made with Applicant No. 1.
- e) Copy of Balance Sheet for F.Y. 2016-17, 2017-18 & 2018-19.
- f) Copy of Electronic Credit Ledger for the period from 01.07.2017 to 31.09.2019.
- g) Details of VAT, Service Tax, Credit of VAT, CENVAT Credit for the period from April 2016 to June 2017 for the project "Celebrity Garden Block-K".

h) List of homebuyers in the project "Celebrity Garden Block-K" along with details of the benefit passed on to each of them.

i) Progress Report submitted to RERA till September 2019.

4. The DGAP has stated that he has examined the above application, the replies of the Respondent and the documents/evidence on record. The main issues for determination were whether there was the benefit of reduction in the rate of tax or ITC on the supply of construction service after the implementation of GST w.e.f. 01.07.2017 and if so, whether such benefit had been passed on by the Respondent to his recipients by way of commensurate reduction in prices, in terms of Section 171 of the CGST Act, 2017.

5. The DGAP has informed that the Respondent had submitted a copy of the RERA Registration Certificate of his Project "Celebrity Garden Block-K" and the payment schedule for the purchase of flats. The Respondent, vide e-mail dated 02.12.2019 had submitted copies of demand letters issued to Applicant No. 1. The Respondent had also furnished the details of the schedule of payment in three categories of the payment plan as is given in Table-A below:-

Table-'A'

(i) Down Payment Plan

1)	At the time of booking	5 % of BCP
2)	Within 45 days from the date of booking	90% of BCP +75% of Parking +75% of EDC +ECC
3)	On offer of Possession	5% of BCP +25% of Parking +25% of EDC + ECC

(ii) Construction Linked Instalment Plan

Sl. No	% of Payment	Charges Type	Other Charges	
1.	10.00%	At the time of booking		
2.	10.00%	Within 45 Days		
3.	10.00%	Within 90 Days	20%	Parking
4.	7.50%	On starting of excavation	20%	Parking
5.	7.50%	On start of Basement	20%	Parking
6.	7.50%	On starting of the Third Floor	20%	Parking
7.	7.50%	On starting of the Sixth Floor	20%	Parking
8.	7.50%	On starting of the Ninth Floor	20%	EDC
9.	7.50%	On starting of the superstructure framework	20%	EDC
10.	5.00%	On starting of Brick Work	20%	EDC
11.	5.00%	On starting of Internal Plumbing & Wiring	20%	EDC
12.	5.00%	On starting of Flooring & Tiles	20%	EDC
13.	5.00%	On starting of Fixing of Windows & Doors Shutters		
14.	5.00%	On offer on Possession		Other

(iii) Time Linked Plan

1)	Fixed amount	Booking Amount for 2 BHK		300000
2)	Fixed amount	Booking Amount for 3 BHK or 4 BHK		500000
3)	20.00%	After 45 days (Less Booking Amt.)		
4)	10.00%	After 90 days		
5)	10.00%	After 3 months	10%	Add.Cost
6)	10.00%	After 3 months	10%	Add.Cost
7)	10.00%	After 3 months	10%	Add.Cost
8)	10.00%	After 3 months	10%	Add.Cost
9)	10.00%	After 3 months	10%	Add.Cost
10)	10.00%	After 3 months	10%	Add.Cost
11)	10.00%	Offer of Possessions	40%	Add.Cost

Payment Schedule of Club Membership

1)	Within 5 months from the date of booking	50%
2)	Within 10 months from the date of booking	50%

Payment Schedule for Interest-Free Maintenance Security

1)	At the time of Offer of Possession @ Rs. 25/- per Sq. Ft	50%
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6. The DGAP has further informed that para 5 of Schedule-III of the CGST Act, 2017 (Activities or Transactions which should be treated neither as a supply of goods nor a supply of services) read as "Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building". Further, clause (b) of Paragraph 5 of Schedule II of the CGST Act, 2017 read 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 the completion certificate, where required, by the competent authority or after its first occupation, whichever was earlier". Thus, 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 Completion Certificate (CC), in terms of Section 17(2) & Section 17(3) of the CGST Act, 2017. Therefore, the ITC pertaining to the unsold units might 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.
7. The DGAP has further reported that before 01.07.2017 i.e. before the GST was introduced, the Respondent was eligible to avail credit of Service Tax paid on the input services (CENVAT credit of Central Excise Duty was not available) in respect of the residential flats for the project "Celebrity Garden Block-K" sold by him. The Respondent was not eligible to avail ITC of VAT paid on the inputs

as he had discharged his VAT output liability on a notional/deemed taxable value of 110% of the purchase prices of the inputs. The DGAP has also stated that post-GST, the Respondent could avail ITC of GST paid on all the inputs and input services. The DGAP has observed from the data submitted by the Respondent covering the period April 2016 to September 2019, the details of the ITC availed by him, the turnovers from the project "Celebrity Garden Block-K", the ratios of ITCs to turnovers during the pre-GST (April 2016 to June 2017) and post-GST (July 2017 to September 2019) periods, have been furnished in Table-B below:-

Table-'B' (Amount in Rs.)

Particulars for the project "Celebrity Garden Block-K"				
S. No.	Particulars	Total (Pre-GST) April 2016 to June 2017	Taxable Turnover from July 2017 to September 2019	Total (Post-GST)
1	CENVAT of Service Tax Paid on Input Services used (A)	2,55,624	-	-
2	ITC of VAT Paid on Purchase of Inputs (B)		-	-
3	Total CENVAT/ITC Available (C)= (A+B)	2,55,624	-	-
4	ITC of GST Availed (D)	-	5,08,131	5,08,131
5	Turnover for as per Home Buyers List (E)	4,29,06,293	8,10,23,545	8,10,23,545
6	Total Saleable Carpet Area (in SQF) (F)	91,010		91,010
7	Total Sold Carpet Area (in SQF) relevant to turnover (G)	47,875		69,695
8	Relevant ITC [(H)= (C)*(G)/(F) or (D)*(G)/(F)]	1,34,468		3,89,124
	Ratio of ITC Pre/Post-GST [(I)=(H)/(E)]	0.31%		0.48%

8. The Respondent has claimed from Table-'B' above that the ITC as a percentage of the turnover which was available to the

Respondent during the pre-GST period (April 2016 to June 2017) was 0.31% and during the post-GST period (July 2017 to September 2019), it was 0.48%, in the Project "Celebrity Garden Block K" as he had discharged his VAT output liability on a notional/deemed taxable value of 110% of the purchase prices of the inputs which established that post-GST, the Respondent had benefited from additional input tax credit to the tune of 0.17% [0.48% (-) 0.31%] of the turnover.

9. The DGAP has also observed that the Central Government, on the recommendation of the GST Council, had levied 18% GST (effective rate was 12% given 1/3rd abatement for the value of land) on construction service, vide Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017. The effective GST rate was 12% for flats. Accordingly, based on the figures contained in Table- 'B' above, the comparative figures of the ratios of ITC availed/available to the turnovers 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, has been tabulated in Table-C below:-

Table-C

(Amount in Rs.)

Sr. No.	Particulars for the project "Celebrity Garden Block-K"		
1	Period	A	July 2017 to September 2019
2	Output GST rate (%)	B	12
3	Ratio of CENVAT credit/ ITC to Total Turnover as per table - 'B' above (%)	C	0.17%
4	Increase in ITC availed post-GST (%)	D= 0.48% less 0.31%	0.17%
5	Analysis of Increase in ITC:		
6	Base Price raised during July, 2017 to June, 2019 (Rs.)	E	8,10,23,545
7	GST raised over Base Price (Rs.)	F= E*B	97,22,825
8	Total Demand raised	G=E+F	9,07,46,370

9	Recalibrated Base Price	$H = E \times (1 - D)$ or 99.83% of E	8,08,85,805
10	GST @12%	$I = H \times B$	97,06,297
11	Commensurate demand price	$J = H + I$	9,05,92,102
12	Excess Collection of Demand or Profiteering Amount	$K = G - J$	1,54,269

10. The DGAP has claimed from Table-'C' above that the additional ITC of 0.17% 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 to the recipients. The DGAP has found from the above calculation explained in Table-C that during the period 01.07.2017 to 31.09.2019, the benefit of ITC that needed to be passed on by the Respondent to the buyers of flats came to Rs. 1,54,269/- which included 12% GST on the base amount of Rs. 1,37,740/-.
11. Consequently, the DGAP has concluded that the benefit of the additional ITC of 0.17% of the taxable turnover has accrued to the Respondent and the same was required to be passed on to Applicant No. 1 and other recipients. The provision of Section 171 of the CGST Act, 2017 has been contravened by the Respondent in as much as the additional benefit of ITC @0.17% of the base price received by the Respondent during the period 01.07.2017 to 30.09.2019, has not been passed on to the Applicant No. 1 and other recipients. On this account, the Respondent had realized an additional amount to the tune of Rs. 8,799/- (including GST) from Applicant No. 1 which included both the profiteered amount @0.17% of the taxable amount (base price) and GST on the above-profiteered amount. The DGAP has further revealed that

the Respondent had also realized an additional amount of Rs.1,45,470/- which included both the profiteered amount @0.17% of the taxable amount (base price) and GST on the above-profiteered amount from 42 other recipients who were not Applicants in the present proceedings. These recipients were identifiable as per the documents on record as the Respondent has provided their names and addresses along with unit Nos. allotted to them. Therefore, this additional amount of Rs. 1,45,470/- was required to be returned to such eligible recipients. The DGAP has also intimated that the Respondent has supplied construction services in the State of Uttar Pradesh only. The DGAP has further stated that the present investigation covered the period from 01.07.2017 to 30.09.2019. Profiteering, if any, for the period post-September, 2019, had not been examined as the exact quantum of ITC that would be available to the Respondent in the future could not be determined at that stage, when the construction of the project was yet to be completed.

12. The above Report was considered by this Authority in its meeting held on 20.04.2020 and it was decided that the Applicants and the Respondent be asked to appear before this Authority on 29.05.2020. A Notice dated 01.05.2020 was also issued to the above Respondent asking him to explain why the Report dated 23.03.2020 furnished by the DGAP should not be accepted and his liability for violating the provisions of Section 171 of the above Act should not be fixed. Ample opportunities were afforded to the parties for filing submissions in the present case. Subsequently, the Respondent vide his emails dated 29.05.2020 and 13.07.2020

has contended that he has paid the profiteered amount Rs. 1,54,269/- along with the interest of Rs. 18,595/- as computed by the DGAP to the buyers. He has also submitted documentary evidence in this regard.

13. Accordingly, the DGAP vide his verification Report dated 14.07.2020 has submitted that the passage of the benefit/profiteering amount was verified with entries made in Current Bank Account Statement from 28.05.2020 to 12.06.2020 as submitted by the Respondent and the DGAP has also reported that the Respondent had passed on the profiteering amount of Rs. 1,54,269/- along with the applicable interest thereon of Rs. 18,595/- to the eligible homebuyers as mentioned in his Report dated 23.03.2020.
14. We have carefully considered the Reports of the DGAP, submissions made by the Respondent and the case record and we observe that the Respondent is in the real-estate business and has been developing his project "Celebrity Garden-Block K" in Lucknow. It is on record that Applicant No. 1 had filed a complaint alleging that the Respondent has not passed on the benefit of ITC to him by way of a commensurate reduction in the price of the flat purchased by him (Applicant No. 1) from the Respondent. We find that the DGAP, after a detailed investigation, has found that the Respondent has not passed on ITC benefit amounting to Rs. 1,54,269/- (inclusive of GST) to his recipients/homebuyers as required under the provisions of Section 171 of the CGST Act, 2017. We observe that the details of the benefit required to be

passed on to the eligible homebuyers have been detailed by the DGAP vide Annexure-11 of his Report dated 23.03.2020.

15. On perusal of the DGAP's Report and Annexures thereto, it is observed that the Respondent, vide his letter 12.11.2019 submitted by him before the DGAP, has admitted that his project 'Celebrity Garden' comprises of four towers having around 150 flats.
16. In the context of this case, we refer to provisions of Section 4 (2) (l) (D) of the Real Estate (Regulation and Development) Act, 2016 (RERA Act 2016, interalia, which provides as below:-

"that seventy percent. of the amounts realised for the real estate project from the allottees, from time to time, shall be deposited in a separate account to be maintained in a scheduled bank to cover the cost of construction and the land cost and shall be used only for that purpose:-

Provided that the promoter shall withdraw the amounts from the separate account, to cover the cost of the project, in proportion to the percentage of completion of the project: Provided further that the amounts from the separate account shall be withdrawn by the promoter after it is certified by an engineer, an architect and a chartered accountant in practice that the withdrawal is in proportion to the percentage of completion of the project."

17. It is observed that the above provision of the RERA Act, 2016 makes it mandatory for a real estate developer/promoter to

maintain separate bank accounts for each of his projects registered separately under the RERA Act, 2016. In the case of the Respondent, the above provision implies that he was required to maintain four separate escrow/bank accounts in respect of the four towers/blocks of the project "Celebrity Gardens", however the DGAP's Report has no mention of this aspect. It has a bearing on the instant proceedings since the DGAP's Report dated 23.03.2020 only covers one of the four blocks i.e. Block 'K'. As the Respondent had obtained four separate RERA registrations for his four blocks/towers, he should have maintained separate escrow/bank accounts. In case the Respondent has not complied with the above-mentioned provision of the RERA Act, 2016, then the entire project "Celebrity Gardens" comprising all its blocks/towers, should be considered as a single project for the computation of profiteering, given that the Respondent has been maintaining a common ITC register/ITC ledger for all the blocks of his said project and has been filing common GST Returns for all the blocks/towers of the said project "Celebrity Gardens". Hence, the compliance of the Respondent with the above-referred provisions of the RERA Act, 2016, becomes paramount and need to be examined. In view of this, there arises the need to revisit the investigation to ascertain if the Respondent has passed on the benefit of ITC to the homebuyers of the other 3 towers/blocks of the impugned project by a commensurate reduction in the prices of the residential units supplied by him in terms of Section 171 of the CGST Act, 2017.



18. Further, we also find that there is a significant variation in the figures adopted by the DGAP in Table-'B' in his Report dated 23.03.2020 vis-à-vis the figures mentioned in the statutory tax returns filed by the Respondent, i.e. the figures of ITC and turnover for the period from 01.04.2016 to 30.06.2017 and the post-GST period from 01.07.2017 to 30.09.2019. The said variation in the two sets of figures of ITC and turnover are detailed in the Table below:-

Table

Period	Turnover as per DGAP's Report (Table-B) (L)	Turnover as per Returns (M)	Difference (N=M-L)
Pre-GST from 01.04.2016 to 30.06.2017	4,29,06,293	6,72,15,874	2,43,09,581
Post-GST from 01.07.2017 to 30.09.2019	8,10,23,545	9,05,36,894	95,13,349

Period	ITC as per DGAP's Report (Table-B) (L)	ITC as per Returns (M)	Difference (N=M-L)
Pre-GST from 01.04.2016 to 30.06.2017	2,55,624	11,62,346	9,06,722
Post-GST from 01.07.2017 to 30.09.2019	5,08,131	75,09,076	70,00,945

Given the above variations in the figures of Turnovers and ITCs, we find the need for an investigation into this aspect to ensure that the Respondent has passed on the benefit of ITC.

19. Hence, in terms of the provisions of Section 171(2) of the CGST Act and for the reasons detailed in Para 17 and Para 18 of this Order, the DGAP is directed to further investigate the present case under Rule 133 (4) of the CGST Rules, 2017 to ensure that the Respondent has passed on the benefit of ITC by way of a

commensurate reduction in the prices in respect of the residential units supplied by him. Hence, without dwelling upon any other aspect of the case and without going into any contentions of the Respondent and the Applicants, this Authority, under the powers conferred on it vide Rule 133(4) of the CGST Rules read with Section 171 of the CGST Act 2017, directs the DGAP to reinvestigate this case and recompute the quantum of profiteering based on above findings.

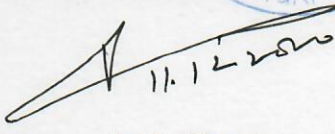
20. The DGAP is directed to submit a fresh Report after a detailed investigation as per Rule 129 (6) of the above Rules, 2017. The Respondent is directed to extend all necessary assistance to the DGAP and furnish him with necessary documents or information as required during the course of the investigation.
21. A copy of this order be supplied to all the parties and 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


A.K. Goel
(Secretary, NAA)

F. No. 22011/NAA/149/Lifeways/2020 /6447-49

Date: 11.12.2020

Copy to:-

1. M/s Lifeways Infrastate Pvt. Ltd., Raja Ram Kumar Plaza-75, Hazratganj, Lucknow, Uttar Pradesh-226001.
2. Directorate General of Anti-Profiteering, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, New Delhi-110001.
3. Sh. Ashok Kumar Singh, 633/159, Gulzar Colony, Near Ayodhya Singh Inter College Chinhath Tiraha, Lucknow-227105.
4. Guard File/NAA website.

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A. K. GOEL
SECRETARY, NAA
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