

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

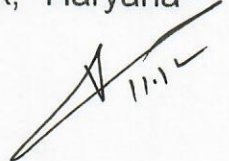
Case No. : 87/2020

Date of Institution : 22.05.2019

Date of Order : 11.12.2020

In the matter of:

1. Ms. Santosh Kumari through Shri Saurabh Prabhakar, 400, 2nd Floor, Street No. 22, Sector-22A, Gurugram, Haryana-122017.
2. Shri Vijai Pratap, 24411, Adarsh Nagar, New Railway Road, Gurugram, Haryana-122001.
3. Shri Ashok Kumar Pawar, SMO No. 142/2, 54, Air Force Station, Near Atul Kataria Chowki, Gurugram, Haryana- 122005.
4. Smt. Sangeeta Ahlawat, 1593 Ke Opposite Side, Sector- 45, Gurugram, Haryana.
5. Shri Rakesh Kumar Arora, H. No. 1593, Sector 13, HUDA, Bhiwani, Haryana.
6. Shri Sahil Mehta, 1614-A, Mehta Nagar, Hissar, Haryana- 125001.
7. Shri Shikha Arora, 1374, Sec-04, Urban Estate, Gurugram, Haryana – 122001.
8. Smt. Shelly Chauhan, shellychauhan16@gmail.com
9. Shri Manish Malik, 218/29, Ram Gopal Colony, Rohtak, Haryana- 124001.



10. Ms. Richa C/o Sh. Anil Kumar Khetan, Rudia Colony, Tosham Road, Bhiwani, Haryana-127021.
11. Shri Mahesh Kumar, Flat No. 255, PKT-7, Sector-12, Dwarka, New Delhi-110078.
12. Shri Mahesh Jamna Dass Dyal Ji Harkhani S/o Sh. Jamna Dass Dyal Ji Harkhani , No. 81, Ist Main Road, Ist Floor, Nagappa Reddy Layout, Kaggadasapura, C.V. Raman Nagar, Bangalore, Karnataka-560093.
13. Director General of Anti-Profitteering, 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 Aster Infrahome Pvt. Ltd., 21-22, Ground Floor, Vipul Agora Complex, MG Road, Gurugram, Haryana-121002.

Respondent

Quorum:-

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

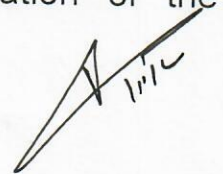
Present:-

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

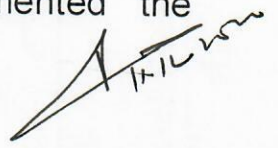


ORDER

1. The brief facts of the present case are that the Applicant No. 2 (herein-after referred to as the DGAP) vide his Report dated 28.02.2019, furnished to this Authority under Rule 129 (6) of the Central Goods & Services Tax (CGST) Rules, 2017, had submitted that he had conducted an investigation on the complaint of the Applicants No. 1 to 12 and found that the Respondent had not passed on the benefit of additional Input tax Credit (ITC) to the above Applicants as well as other home buyers who had purchased Flats in his Project "Green Court", as per the provisions of Section 171 (1) of the CGST Act, 2017. Vide his above Report the DGAP had also submitted that the Respondent had denied the benefit of ITC to the above buyers amounting to Rs. 5,30,34,074/-, pertaining to the period w.e.f. 01.07.2017 to 31.08.2018 and thus had indulged in profiteering and violation of the provisions of Section 171 (1) of the above Act.
2. This Authority after careful consideration of the Report dated 28.02.2019 had issued notice dated 05.03.2019 to the Respondent to show cause why the Report furnished by the DGAP should not be accepted and his liability for violation of the provisions of Section 171 (1) should not be fixed. After hearing both the parties at length this Authority vide its Order No. 57/2019 dated 19.11.2019 had determined the profiteered amount as Rs. 5,30,34,074/- as per the provisions of Section 171 (2) of the above Act read with Rule 133 (1) of the CGST Rules, 2017 pertaining to the period from 01.07.2017 to 31.08.2018 and also held the Respondent in violation of the provisions of Section 171 (1) of the above Act.



3. It was also held that the Respondent had denied the benefit of ITC to the buyers of the flats being constructed by him in contravention of the provisions of Section 171(1) of the CGST Act, 2017 and he had thus committed an offence as per the provisions of Section 171(3A) of the CGST Act, 2017 and therefore, the Respondent was liable for imposition of penalty under Section 171(3A) of the above Act.
4. The Respondent was issued notice dated 27.12.2019 asking him to explain why the penalty mentioned in Section 171(3A) of the CGST Act, 2017 read with Rule 133 (3) (d) of the CGST Rules, 2017 should not be imposed on him.
5. The Respondent was given opportunity for hearing or to file his written submissions, if any, on 19.02.2020 and 13.03.2020. The Respondent did not avail any of these opportunities and further requested for adjournment of hearing telephonically. However, no written submissions have been received from the Respondent till date.
6. We have carefully considered all the material placed before us and it has been revealed that the Respondent has not passed on the benefit of additional Input tax Credit (ITC) to the above Applicants as well as other homebuyers who have purchased them in his Project "Green Court" for the period from 01.07.2017 to 31.08.2018 and hence, the Respondent has violated the provisions of Section 171 (1) of the CGST Act, 2017.
7. It is also revealed from the perusal of the CGST Act and the Rules framed under it that the Central Government vide Notification No. 01/2020-Central Tax dated 01.01.2020 has implemented the



provisions of the Finance (No. 2) Act, 2019 from 01.01.2020 vide which sub-section 171 (3A) was added in Section 171 of the CGST Act, 2017 and penalty was proposed to be imposed in the case of violation of Section 171 (1) of the CGST Act, 2017.

8. Since, no penalty provisions were in existence between the period w.e.f. 01.07.2017 to 31.12.2018 when the Respondent had violated the provisions of Section 171 (1), the penalty prescribed under Section 171 (3A) cannot be imposed on the Respondent retrospectively. Accordingly, the notice dated 04.02.2020 issued to the Respondent for imposition of penalty under Section 171 (3A) is hereby withdrawn and the present penalty proceedings launched against him are accordingly dropped.
9. Copy of this order be supplied to both the parties. File be consigned after completion.

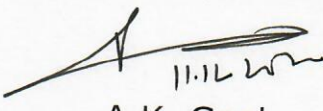
S/d
(J. C. Chauhan)
Technical Member



S/d
(Amand Shah)
Technical Member

S/d
(Dr. B. N. Sharma)
Chairman

Certified Copy


11.12.20
A.K. Goel
(Secretary, NAA)

F. No. 22011/NAA/11/Aster/2019 | 6478-6480. Date: 11.12.2020
Copy to:-

1. M/s Aster Infrahome Pvt. Ltd., 21-22, Ground Floor, Vipul Agora Complex, MG Road, Gurugram, Haryana-121002.
2. Ms. Santosh Kumari through Shri Saurabh Prabhakar, 400, 2nd Floor, Street No. 22, Sector-22A, Gurugram, Haryana-122017.

3. Shri Vijai Pratap, 24411, Adarsh Nagar, New Railway Road, Gurugram, Haryana-122001.
4. Shri Ashok Kumar Pawar, SMO No. 142/2, 54, Air Force Station, Near Atul Kataria Chowki, Gurugram, Haryana- 122005.
5. Smt. Sangeeta Ahlawat, 1593 Ke Opposite Side, Sector- 45, Gurugram, Haryana.
6. Shri Rakesh Kumar Arora, H. No. 1593, Sector 13, HUDA, Bhiwani, Haryana.
7. Shri Sahil Mehta, 1614-A, Mehta Nagar, Hissar, Haryana- 125001.
8. Shri Shikha Arora, 1374, Sec-04, Urban Estate, Gurugram, Haryana – 122001.
9. Smt. Shelly Chauhan, shellychauhan16@gmail.com
10. Shri Manish Malik, 218/29, Ram Gopal Colony, Rohtak, Haryana- 124001.
11. Ms. Richa C/o Sh. Anil Kumar Khetan, Rudia Colony, Tosham Road, Bhiwani, Haryana-127021.
12. Shri Mahesh Kumar, Flat No. 255, PKT-7, Sector-12, Dwarka, New Delhi-110078.
13. Shri Mahesh Jamna Dass Dyal Ji Harkhani S/o Sh. Jamna Dass Dyal Ji Harkhani , No. 81, Ist Main Road, Ist Floor, Nagappa Reddy Layout, Kaggadasapura, C.V. Raman Nagar, Bangalore, Karnataka- 560093.
14. Directorate General of Anti-Profiteering, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, New Delhi-110001.
15. Guard File.

ole


A. K. GOEL
SECRETARY, NAA