BEFORE THE NATIONAL ANTI-PROFITEERING AUTHORITY

UNDER THE CENTRAL GOODS & SERVICES TAX ACT, 2017

I.O. No.	28/2020
Date of Institution	19.03.2020
Date of Order	27.11.2020

In the matter of:

1. Shri Parveen Kumar Bansal, P-102, BPTP Park Grandeura, Sector-82, Faridabad-121004.
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 Sternal Buildcon Pvt. Ltd., 12th Floor, Dr. Gopal Das Bhawan, 28, Barakhamba Road, 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 19.03.2020 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 filed an application under Rule 128 of the CGST Rules, 2017 alleging profiteering by the Respondent in respect of the purchase of Flat No. 7-205 (2BHK-T3), in the Respondent's project "The Serenas", Sector-36, Sohna, Gurgaon-122002. Applicant No. 1 alleged that the Respondent had not passed on the benefit of input tax credit (ITC) to him by way of commensurate reduction in prices and charged the full rate of GST on the amount due to him against payments.
2. The DGAP has submitted that on receipt of the aforesaid reference from the Standing Committee on Anti-profiteering on 28.06.2019, a notice under Rule 129 of the CGST Rules was issued by the DGAP on 08.07.2019 to the Respondent to reply as to 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 15.07.2019 to 17.07.2019. The Respondent availed of the said opportunity on 22.07.2019 and inspected the documents.

3. Further, the DGAP has reported that vide his e-mail dated 18.02.2020, Applicant No. 1 was also allowed to inspect the non-confidential documents/reply furnished by the Respondent on 26.02.2020 or 27.02.2020. However, the Applicant did not avail of the said opportunity.

4. It has also been stated by the DGAP in his report that the period covered by the current investigation was from 01.07.2017 to 30.06.2019 and that the time limit to complete the investigation was extended up to 02.03.2020 by this Authority, vide Order dated 12.12.2019, in terms of Rule 129(6) of the CGST Rules, 2017.

5. Further, the DGAP has reported that in response to the notice dated 08.07.2019 and various reminders, the Respondent replied vide letters/emails dated 22.07.2019, 20.08.2019, 04.10.2019, 14.02.2020, 25.02.2020, and 02.03.2020 to the DGAP.

6. Further, the Respondent had submitted to the DGAP that the dwelling unit of Applicant No. 1 had been cancelled on 09.04.2018 due to default in making payment as per the Haryana Affordable Housing Policy 2013, and the amount was refunded to him by the Respondent.

7. Further, the DGAP has reported that the Respondent has submitted that Anti-profiteering provisions did not apply to the project "The Seneras" since the draw for the selection of the allottees, the allotments, the Builder-Buyer agreements, and construction activities were executed in the GST period only. On scrutinizing the documents submitted by the Respondent it was found that the Respondent entered into an agreement with the Contractor for the construction of Residential Units on 31.08.2017 after which construction activities started on 10.09.2017. Further the Respondent held the draw on 20.07.2017. Post draw, the first Builder-Buyer agreement was entered into on 18.09.2017. Therefore, it was observed that the Residential project "The Serenas" was launched in the post-GST regime and there was no price history of the residential units sold in the pre-GST regime which could be compared with the Post-GST base price to establish whether there was any profiteering by the Respondent or not as the Respondent neither availed any ITC nor had any turnover in pre-GST regime on Residential dwelling units. Further as per para 5 of Annexure- A of Affordable Housing Policy 2013 notified by the Haryana Government on 19.08.2013, Rs. 3,600/- per sq. ft. (for other High and Medium Potential Towns) was the Maximum allotment rate on per sq. ft. carpet area basis for Sohna and this was not the actual rate at which units were to be sold but the suppliers of construction service were free to fix their base price subject to the ceiling of Rs. 3,600/- per sq. feet. In the instant

case, all activities related to the residential project had been done only after the introduction of GST w.e.f. 01.07.2017. Therefore, the provisions of Section 171 of the CGST Act, 2017 were not attracted in the case of Residential Units, and no profiteering was found therein.

8. It has also been reported by the DGAP that upon examination of 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, it was observed that the Respondent had charged 12% GST till 24.01.2018 and had charged the reduced rate of GST @ 8% w.e.f. 25.01.2018 and therefore, it appeared that the Respondent had passed on the benefit of reduction in the rate of tax in compliance with the provisions of Section 171 of CGST Act, 2017.

9. The DGAP has also reported that the Respondent had registered the impugned Group Housing Project under the provisions of Haryana Real Estate (Regulation and Development) Act, 2016 (HRERA) under Registration No. 02 of 2017 dated 19.06.2017, and the Respondent was permitted to develop the project along with certain commercial retail shops in the shopping complex named as "Signum-36" within the Group Housing Project. The Respondent submitted that he had received a sum of Rs 4,49,25,897/- during the pre-GST regime as advance token money/underwrite money in respect of commercial units in the commercial complex "Signum-36" in the

Group Housing Project "The Serenas" before the start of any construction activities on the project. The Builder Buyer Agreement (BBA) in respect of Commercial Units sold was first executed on 03.11.2017 i.e. during the post GST period. Further, neither tax was levied/recovered under the provisions of Haryana Value Added Tax Act, 2003 nor had he availed any ITC since, there was no transfer of property in goods that had occurred in the pre-GST period consequently 'NIL' Return under the provision of HVAT Act, 2003 was filed. However, Service tax as applicable was payable on a 'receipt basis' and he was claiming credit in respect of service tax paid on various input services received by him, such as Legal, Architecture & structure engineers relatable to the commercial units only. Therefore, the Respondent had both CENVAT Credit as well as Turnover in the pre-GST period with regard to Commercial units and as such could be compared with the post-GST period.

10. Concerning the Commercial Project "Signum-36", The DGAP has reported that that before the GST was introduced, the Respondent had been availing credit of Service Tax paid on input services only. No credit was availed in respect of Central Excise Duty paid on the inputs as also the input tax credit of VAT paid on inputs by the Respondent. Further, post-GST, the Respondent was entitled to avail input tax credit of GST paid on all the inputs and the input services including the sub-contracts. From the information submitted by the Respondent for the period April 2016 to June 2019, the details of the

input tax credit availed by him, his turnover from the commercial project "Signum-36", the ratio of input tax credit to turnover, during the pre-GST (April 2016 to June 2017) and post-GST (July 2017 to June 2019) periods, are as per Table-'B' below:-

Table-B (Amount in Rs.)

S. No.	Particulars	April 2016 to June 2017	July 2017 to June 2019
(1)	(2)	(5) = (3) + (4)	(8)= (6)+(7)
1	CENVAT of Service Tax Paid on Input Services used as per ST-3 (A)	28,62,077	-
2	Input Tax Credit of VAT Paid on Purchase of Inputs (B)	-	-
3	Total Input Tax Credit of GST Availed for Commercial Units (C)	-	73,93,500
4	Total CENVAT/Input Tax Credit Available (D)= (A+B) or (C)	28,62,077	73,93,500
5	Turnover for Commercial Units as per List of Shop Buyers (E)	4,49,25,897	12,56,34,568
6	Total Saleable Area of Commercial Units (in SQF) (F)*	38,211.35	38,211.35
7	Total Sold Area relevant to turnover as per List of Shop Buyers (in SQF) (G)	13,539.47	34,127.00
8	Relevant ITC [(H)= (D)*(G)/(F)]	10,14,123	66,03,221
	Ratio of Input Tax Credit Post-GST [(I)=(H)/(E)]	2.26%	5.26%

11. Therefore, the DGAP has stated that the ITC as mentioned in the 'Table B' above as a percentage of the turnover that was available to the Respondent during the pre-GST period (April 2016 to June 2017) was 2.26% whereas, during the post-GST period (July 2017 to June

2019), the percentage was 5.26%. It clearly confirmed that post-GST, the Respondent had benefited from additional input tax credit to the tune of 3.00% [5.26% (-) 2.26%] of the turnover. Accordingly, the profiteering had been examined by comparing the applicable tax rate and input tax credit available in the pre-GST period (April 2016 to June 2017) when Service Tax @4.50% was payable with the post-GST period (July 2017 to June 2019) when the effective GST rate was 12% (GST @18% along with 1/3rd abatement for land value) on construction service, vide Notification No.11/2017-Central Tax (Rate), dated 28.06.2017. Accordingly, based on the figures contained in Table- 'B' above, the comparative figures of the ratio of ITC available/availed to the turnover in the pre-GST and post-GST periods as well as the turnover, the recalibrated base price, and the excess realization (profiteering) during the post-GST period has been furnished by the DGAP in the below mentioned Table-C:-

Table-C **(Amount in Rs.)**

S.No	Particulars		Post-GST
1	Period	A	After 01.07.2017
2	**Output GST Rate (%)**	B	12.00
3	The ratio of CENVAT credit/Input Tax Credit to Total Turnover as per table-'B' above (%)	C	5.26
4	Increase in input tax credit availed post-GST (%)	D=5.26% less 2.26%	3.00

5	Analysis of Increase in input tax credit:		
6	Base Price raised/collected from July 2017 to June 2019 (Rs.)	E	12,56,34,568
7	GST@12% over Base Price	F=E*12%	1,50,76,148
8	Total amount to be collected/raised	G=E+F	14,07,10,716
9	Recalibrated Base Price	H=(E)*(1-D) or 97% of (E)	12,18,65,531
10	GST@12%	I=H*12%	1,46,23,864
11	Commensurate demand price	J=H+I	13,64,89,395
12	Excess Collection of Demand or Profiteering Amount	K=G-J	**42,21,321**

12. Given the above Table-'C' above, the DGAP has claimed that the additional ITC of 3% of the turnover should have resulted in the commensurate reduction in the base price as well as cum-tax price. Therefore, in terms of Section 171 of the CGST Act, 2017, the benefit of such additional ITC was required to be passed on by the Respondent to his recipients.

13. The DGAP has further stated that based on the aforesaid CENVAT/ITC availability in the pre and post-GST periods and the details of the amount raised/collected by the Respondent from the other shop buyers during the period 01.07.2017 to 30.06.2019, the Respondent had benefited by an additional amount of ITC of Rs. 42,21,321/- which included GST @12% on the base profiteered amount of Rs. 37,69,037/-. The buyer wise/ unit-wise break-up of that

amount has been provided by the DGAP in Annexure-16 of his report. The DGAP has also submitted that the above-mentioned amount did not include any benefit of ITC to be passed on to Applicant No. 1 as the provisions of Section 171 of the CGST Act, 2017 were not attracted in the case of buyers of residential units, including the Applicant No.1

14. The DGAP has concluded that the allegation of profiteering by way of not passing on the benefit of reduction in the rate of tax or benefit of ITC in case of Residential Units did not stand confirmed against the Respondent and the provisions of Section 171 of the CGST Act, 2017 were not attracted.

15. The DGAP has also submitted that as the present investigation covered the period from 07.2017 to 30.06.2019, profiteering, if any, for the period post-June 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 this stage since the Respondent was continuing to avail ITC in respect of the present project.

16. The above report of the DGAP was considered by this Authority in its sitting held on 20.04.2020 and it was decided to hear the Applicants and the Respondents on 02.06.2020. A Notice dated 01.05.2020 was also issued to the Respondent asking him to explain why the Report dated 19.03.2020 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. The Respondent vide his

emails dated 02.06.2020, 06.06.2020, 17.06.2020, and 18.07.2020 repeatedly requested for certain documents, which were duly supplied to him. The Applicant No. 1, vide his email dated 03.07.2020, made submissions before this Authority, interalia, highlighting that the Respondent has not disclosed complete facts and figures, relating to the various projects being developed and marketed by the Respondent and his group companies and sister-concerns, before the DGAP. Applicant No. 1 also submitted that the Report of the DGAP was biased and appeared to unjustly favour the Respondent; also that the Report of the DGAP was unacceptable as it was based on false/ incorrect data/ information tendered by the Respondent to mislead the DGAP.

17. Clarifications were sought from the DGAP in terms of Rule 133(2A) of the CGST Rules 2017 on the submissions of Applicant No. 1. The DGAP submitted his clarifications on 23.07.2020, which were later supplied to Applicant No. 1. Vide his report, the DGAP has clarified:-

a. That in respect of complaints in respect of other projects launched by other group companies of the Respondent in other states, the Applicant No. 1 was at liberty to approach the Screening Committees of Anti Profiteering of the concerned States.

b. That the Respondent was undertaking a single project i.e. 'The Serenas' in the State of Haryana and that this issue had already been addressed in para-16 of the DGAP Report dated 19.03.2020.

c. That, in the instant case, the Screening Committee had instantly acted on the Application filed by Applicant No. 1 vide its letter F.No. D-22011/66/2017/183 dated 09.01.2018; that the Standing Committee, in its meeting held on 11.03.2019, had decided to return the complaint to Applicant No. 1 since it was not supported by adequate information/evidence, along with a request to the Applicant No. 1 to resubmit the Application with complete information and the supporting documentary evidence, such as relevant invoices, etc. and to approach the jurisdictional GST authorities if any further assistance was required. Further, vide its Memo No. 352 dated 19.03.2019, the Haryana State Screening Committee had also requested Applicant No. 1 to provide requisite evidence to corroborate his contentions either through physical appearance or through e-mail. Finally, Applicant No. 1 re-submitted his Application vide his e-mails dated 08.04.2019 & dated 12.04.2019. The Application was considered in the meeting of the Standing Committee held on 15.05.2019 and as per the recommendation of the Standing Committee, a detailed investigation was carried out by him (DGAP) and his investigation report was furnished to this Authority on 19.03.2020. Therefore, the concerned Authorities (Haryana State Screening Committee, Standing Committee & the DGAP) had taken appropriate actions in a time-bound manner.

d. That the allotment of the units to the buyers, including Applicant No. 1, was made through draw of lots, held on 20.07.2017 and the first Builder-Buyer Agreement was executed on 18.09.2017; that the Respondent had already submitted during the course of the investigation that no Builder-Buyer Agreement was executed with Applicant No. 1 since the booking of his unit had been cancelled by the Respondent.

e. That the VAT Assessment Orders in respect of the Respondent for the period 01.04.2016 to 30.06.2017 had revealed that the Respondent had received a total sum of Rs. 4,49,25,897/- as advance from the Commercial Shops buyers and this amount has been duly considered in Table-'B' of para-21 of the DGAP's report dated 19.03.2020. Therefore, the contention of Applicant No. 1 that the Respondent had received a huge amount before July 2017 was untenable.

f. That no CENVAT Credit of Central Excise Duty paid on inputs and credit of Service tax paid on input services was permissible to the Respondent under CENVAT Credit Rules, 2004 of the erstwhile tax regime as his project was an affordable residential housing project in terms of Notification No. 9/2016- Service Tax dated 01.03.2016. Further, the VAT Assessment Order for the period 01.04.2016 to 30.06.2017 revealed that the Respondent had also not availed any ITC of VAT. Therefore, the contention of Applicant

No. 1 of the Respondent having availed CENVAT credit/ ITC in the pre-GST period was also not tenable;

g. That the issue relating to the cancellation of his unit fell outside the mandate of the DGAP and hence the Applicant No. 1 had already been advised to approach the competent forum for addressing his grievance relating to the cancellation of his unit.

18. The Respondent vide his submissions 28.09.2020 has stated that:-

a. Certain documents were needed by him from the DGAP to enable him to prepare a cogent reply and that he had received several copies of communications shared between this Authority, the Commissioner Central Tax Delhi and the Applicant No. 1 and that he was unable to understand as to which document was to be construed as a complaint of the Applicant No. 1.

b. Applicant No. 1's complaint appeared to be non-existent and hence the provisions of Rule 128 of the CGST Rules 2017, applicable for dealing with complaints had not been followed and that the entire proceedings against him were null and void as they emanated from a non-existing complaint.

c. The timelines prescribed under Rule 128 of the CGST Rules, 2017 had been vitiated and hence the entire proceedings were time-barred.

d. In para 19 of his report dated 19.03.2020, the DGAP has given a finding that certain input credit was availed in

respect of service tax on certain services availed by him (Respondent) in the pre GST period.

e. An advance of Rs. 4,49,25,897/-, received by him for the commercial project has been incorrectly termed as Turnover for his commercial units for the computation of profiteering as detailed in Table B of DGAP's Report.

f. The constitution of the National Anti-profiteering Authority without any judicial member was illegal.

g. The provisions of Section 171 of the CGST Act 2017, which required a registered dealer to reduce his prices commensurately to the benefit derived by him, were unconstitutional.

h. The procedure for calculating the quantum of profiteering was not specified in the case of builders like him.

i. The report of the DGAP was unacceptable to him because he had not been allowed to controvert or respond to the DGAP regarding the computation of profiteering which had been worked out by adopting an average basis. Also, the Procedure & Methodology notified by this Authority did not provide the basis, method, and reasoning for computing profiteering in the event of any contravention of the provisions of section 171 of the CGST Act.

j. The DGAP, in para 18 of his Report, had incorrectly concluded that the Apex Court decision in the case of

Larsen & Toubro & others v. State of Karnataka & others (2013) 65 VST 1 (SC) covered a different statute and was not relevant to the current GST laws.

k. He was engaged in the development of a residential and commercial project. His commercial project commenced in July 2018 whereas the construction contract was awarded in April 2018. The transaction by him fell squarely under the definition of a composite work contract which had commenced only after the enforcement of the GST laws.

l. In para 15 of the DGAP Report, DGAP has stated that profiteering, if any, alleged on the Respondent, should be determined within the parameters of Rule 129(6) and should be within the framework of the profiteering computed by the DGAP. While computing the quantum of profiteering, the DGAP has erred in including the case of the Applicant, who was no longer an interested party after his residential unit was cancelled on 8.04.2018. The Respondent has further contended that while doing so, the DGAP has incorrectly assumed a suo-moto jurisdiction to continue with the investigation against him.

m. Rule 129(6) did not provide that it was mandatory for the profiteering to be determined at any point during the process of any product or service which was under completion. If so, profiteering would have to be

determined in respect of all work in progress. Hence the interpretation of Rule 129(6) adopted by the DGAP was erroneous.

n. That the DGAP, in his investigation report dated 19.03.2020, has ascertained the profiteering @ 3% based on the average ITC claimed during pre-GST and post-GST periods and that this quantification was erroneous because certain inputs used in the construction activity, such as bricks, stone, dust stone aggregate, etc. were exempt from VAT in the pre-GST period. However, in the post-GST period, these inputs started attracting GST @5%, However, while computing the profiteering, DGAP has included these tax-free items incorrectly, whereas the GST on such items, that were earlier tax-free, ought to have been excluded from the computation.

19. A supplementary report was sought from the DGAP on the above submissions of the Respondent. The DGAP submitted his clarifications dated 26.10.2020 countering the submissions made by the Respondent, The DGAP has interalia clarified:–

a. That the DGAP had received the reference from Standing Committee on Anti-profiteering on 28.06.2019 to conduct a detailed investigation in respect of Application dated 12.04.2019 filed by Applicant No. 1 along with supporting documents.

b. That the contention of the Respondent regarding DGAP's expanding the scope of the investigation beyond the Application was untenable in light of the provisions of Section 171(2) of the CGST Act, 2017 which provided for investigation of all the supplies made by a registered person to all his recipients from the perspective of passing on the commensurate benefit to each buyer. Therefore, all the supplies affected by a registered person were required to be investigated. It was thus pertinent that the DGAP could not overlook the commission of an offence that had occurred under Section 171 (1) of the above Act once it had come to notice during the course of the investigation.

c. That in respect of the contention of the Respondent regarding the absence of the procedure for calculating profiteering in the case of builders it was clarified that **the** methodology adopted by the DGAP was correct and strictly as per the law enshrined in Section 171 of the CGST Act. The methodology had been consistently adopted by the DGAP and upheld by this Authority in all similar cases; that to quantify the benefit of ITC, it was necessary to quantify the credits available to the Respondent in the pre-GST regime and also the credits available in the GST regime. Further, the amount of the additional benefit of ITC required to be passed on, was the amount paid by the customers to the Respondent in the form of GST charged from them which was to be deposited by the Respondent in the

Government exchequer. But the Respondent instead of paying the GST amount in cash in the Government exchequer utilized the ITC available to him in addition to the credit which was not available to him in the pre-GST period; that therefore, the Respondent was not required to pay anything from his own pocket to pass on the benefit of additional ITC accrued to him in GST period. Hence, the methodology adopted by the DGAP was correct and justifiable; that the increase in ITC as a percentage of total taxable turnover availed by the Respondent in the post-GST period had been quantified and compared with the pre-GST period.

d. That under the erstwhile pre-GST tax regime, various taxes, and Cess were being levied by the Central Government and the State Governments, which got subsumed in the GST. Out of these taxes, the ITC of some taxes was not being allowed in the erstwhile tax regime. For example, the ITC of Central Sales Tax, which was being collected and appropriated by the States, was not admissible. Similarly, in the case of construction service, while the input tax credit of Service Tax was available, the input credit of Central Excise Duty paid on inputs was not available to the service provider. Such input taxes, the credit of which was not allowed in the erstwhile tax regime, used to get embedded in the cost of the goods or services supplied, resulting in increased price. With the introduction of GST with effect from 01.07.2017, all these

taxes got subsumed in the GST and the ITC of GST was available in respect of all goods and services unless specifically denied. Broadly, the additional benefit of ITC in the GST regime would be limited to those input taxes, the credit of which was not allowed in the pre-GST regime but was allowed in the GST regime. This additional benefit of ITC in the GST regime was required to be passed on by the suppliers to the recipients by way of commensurate reduction in price, in terms of Section 171 of GST Act, 2017. Therefore, it was reiterated that the approach & methodology adopted by the DGAP aligned with the provisions of Section 171 of the CGST Act, 2017.

e. That there was a direct correlation between the turnover and the ITC as the Respondent was discharging his GST output liability out of the ITC available to him based on the turnover i.e. the cost realized by him from the buyers. Moreover, the benefit was to be passed on the additional ITC proportionate to the payment made by a buyer, and hence the above ratios were relevant. Therefore, the above claim of the Respondent could not be accepted.

f. That the contention of the Respondent that no opportunity of representation was given by the DGAP was also not tenable as Rule 133 (2) of the Rules only provided this Authority to give an opportunity of personal hearing to the interested parties.

g. That under the provisions of Section 171 of the CGST Act, 2017, no tax was being levied or collected from the Respondent; that the Respondent has misinterpreted provisions of Section 171 of the CGST Act, 2017 as its intent was to ensure that sacrifice of tax revenue by Central and State Governments for the welfare of consumers was passed on to them by the suppliers; that thus, the case laws referred by the Respondent in the cases of *B. C. Srinivasa Setty, Palai Central Bank Ltd., National Mineral Development Corporation, and Larsen & Toubro* did not come to his support.

h. That while all proceedings must flow from an Application and that, there were no legal provisions for its discontinuation. Also, in terms of Rule 129 of the Central Goods and Services Tax Rules, 2017, the DGAP was under a statutory obligation to complete the investigation in case of receipt of any reference from the Standing Committee on Anti-profiteering.

i. That further, under Rule 129 (2) of the above Rules, the DGAP was required to investigate whether a registered person had passed on the benefit of tax reduction or ITC to the recipients or not and hence during the course of an investigation if it came to notice that the Respondent had not passed on the benefit to any eligible recipients, the DGAP was legally bound to investigate the same and bring the facts before this Authority for determination of those benefits to the eligible recipients. It was also clear that the above benefit had accrued

to the Respondent due to the concession given by the Central as well as the State Government out of the public exchequer, therefore, the DGAP was bound to investigate to ascertain whether the Respondent had misappropriated the amount of ITC which he was required to pass on to the buyers. The DGAP could not overlook the commission of an offence which has occurred under Section 171 (1) of the above Act once it had come to his notice during the course of the investigation and hence the above contentions of the Respondent were not correct.

20. The said clarifications of the DGAP were supplied to the Respondent to file his rejoinder if any. The Respondent vide his submissions dated 02.11.2020, stated that he has already filed his consolidated submissions on 28.09.2020 and that any further reply would be a repetition of the earlier submissions. He requested this Authority to pass an appropriate Order after considering his submissions dated 28.09.2020.

21. We have carefully considered the Report furnished by the DGAP, the submissions made by the Respondent and the other material placed on record. On examining the various submissions, the observations of this Authority are as follows:-

a) The DGAP, in Para 16 of his report, has stated that the Respondent had entered into an agreement with the Contractor for the construction of Residential Units on

31.08.2017 and the construction activities commenced on 10.09.2017 and the draw of the flats was held on 18.09.2017. Therefore, the DGAP has concluded that the Residential project i.e. 'The Serenas' of the Respondent was launched in the post-GST regime and there was no price history of the residential units sold in the pre-GST regime which could be compared with the post-GST base price to establish whether there was any profiteering by the Respondent or not. However, as per the heading 'Other Current Liabilities' under Note 6 of the Annual Financial Statement of the Respondent for the period 2016-17, it is observed that the Respondent has received an amount of Rs. 16,77,22,611/- as 'Security from Applicants(d)' which is explained as "*(d) During the Financial Year, the Company has launched "Affordable Housing Project" by the name & style of "SERENAS" under the Affordable Housing Scheme by Haryana Urban Development Authority Limited. The flats shall be allotted to the applicants by way of a draw of lots which is yet to happen as on 31st March 2017 & pending the same, the application money received has been shown as Security from Applicants."* Given the above, it is clear that the Respondent has received the above mentioned 'Security Amount' in the pre-GST period and that it relates to the residential units of 'The Serenas'. Hence, the finding of

the DGAP that there wasn't any price history of his residential units in the pre-GST period needs to be revisited since this Authority is of the view that the above-said security amount received from the applicants merits to be incorporated in the pre-GST turnover while computing the quantum of profiteering.

b) Further, this Authority observes that the two projects, namely 'The Serenas' (comprising residential units) and 'Signum 36' (comprising commercial units) have been developed and executed by the Respondent under a single GST registration on the same plot of land having common facilities and common areas. Further, the ITC paid is also common for the commercial and the residential area of the projects. Further, it is observed that the Respondent has also been maintaining a common Input Tax Credit Ledger and other connected records for the residential and commercial units of 'The Serenas' and 'Signum 36'. Therefore, these two projects deserve to be considered as an integrated project comprising both, residential and commercial units for the purpose of computation of profiteering in terms of Section 171 of the CGST Act, 2017.

c) Needless to state that while computing the quantum of profiteering in the instant case, the amounts received as 'Security Amount' in respect of 'the Serenas' and the 'Advance Token Money' in respect of 'Signum 36' shall be appropriately factored in the computation.

22. Therefore, without going into the merits and the other submissions made by the Respondent and the Applicants at this stage, we find this case to be a case that merits to be reinvestigated by the DGAP based on the above observations of this Authority. Thus, we direct the DGAP to reinvestigate the matter as per the provisions of Rule 133(4) of the CGST Rules 2017.

23. 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 furnished by the DGAP under Rule 129 (6) of the above Rules. Since the present Report has been received by this Authority on 19.03.2020, this Order was to be passed by 18.09.2020. However, due to the prevalent pandemic of COVID-19 in the country, this Order could not be passed before the above date due to *force majeure.* Accordingly, this Order is being passed today in terms of 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 and Customs under Section 168 A of the CGST Act, 2017.

24. A copy each of this Order be supplied to the Applicants and the Respondent for necessary action. File be consigned after completion.

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

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

Sd/-
(Amand Shah)
Technical Member

Certified Copy

O/C

A.K. Goel
(Secretary, NAA)

F. No. 22011/NAA/150/Sternal(Serenas)/2020/6254-57 Date: 27.11.2020

Copy to:-

1. M/s Sternal Buildcon Pvt. Ltd., 12th Floor, Dr. Gopal Das Bhawan, 28 Barakhamba Road, New Delhi-110001
2. Shri Parveen Kumar Bansal, P-102, BPTP Park Grandeura, Sector-82, Faridabad-121004.
3. Directorate General of Anti-Profiteering, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai ViR Singh Marg, New Delhi-110001.
4. Guard File.

A. K. GOEL
SECRETARY, NAA