

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

Case No. 14/2022

Date of Institution 31.08.2020

Date of Order 13.05.2022

**In the matter of:**

1. 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 Shree Infra, River View Heights, Peddar Road, opp. Valkeshwar Society,  
Surat-395105

**Quorum:-**

1. Sh. Amand Shah, Technical Member & Chairman
2. Sh. Pramod Kumar Singh, Technical Member
3. Sh. Hitesh Shah, Technical Member

Amand

**Present: -**

1. None for the Applicant.
2. None for the Respondent.

## Order


The present Report dated 27.08.2020, was received on 31.08.2020 from the Director General of Anti-Profiteering (DGAP) after a detailed investigation under Rule 133(5) of the Central Goods & Service Tax (CGST) Rules, 2017. The brief facts of the present case are that the DGAP, upon receipt of a reference from the Standing Committee on Anti-Profiteering, wherein it was alleged by Sh. Vasantbhai Bhikabhai Patel, 202, Shree Shakti Tower, Near Eiffel Tower, L H Road, Surat- 395006 that the Respondent had not passed on the benefit of Input Tax Credit (ITC) by way of commensurate reduction in price in respect of purchase of two flats i.e. H/1/702 and H/1/802 in his Project "River View Heights", had investigated the matter in detail and submitted his Report dated 24.04.2019 to this Authority on 24.04.2019. Vide his Report dated 24.04.2019, the DGAP had informed that the Respondent had additionally benefited with Input tax Credit (ITC) @ 0.28% i.e. amounting to Rs. 2,13,468/- (including GST) during the period from 01.04.2017 to 31.10.2018 which was to be passed by the Respondent to the eligible home buyers of the aforesaid project in terms of the provisions enshrined under section 171 of the Central Goods and Services Tax (CGST) Act 2017. This Authority had carefully examined the DGAP's Report dated 24.04.2019, submissions of the Respondent and all the documents placed on record and passed a detailed and reasoned order vide Order No. 51/2019 dated 21.10.2019 as per Rule 133 (1) of the CGST Rules 2017 confirming the profiteered amount of Rs. 2,13,468/- as computed by the DGAP for Phase-II of the Project "River View Heights" of the Respondent and directed the latter to pass on the same alongwith interest @18% to the eligible home

buyers of the said Project and to reduce the price to be realized from the buyers of the flats commensurate with benefit of ITC received by them.

2. During careful consideration of the aforesaid Report dated 24.04.2019 and submissions of the Respondent, this Authority had reason to believe that the investigation has been restricted to Phase-II of the Respondent's Project "River View Height" ignoring other phases of the said Project. Hence this Authority had directed the DGAP to investigate the issue of passing the benefit of additional ITC in respect of the whole Project and submit Report under Rule 133 (5) of the CGST Rules, 2017.

3. In terms of the aforesaid Order dated 21.10.2019, the DGAP has investigated the matter and submitted his Report dated 27.08.2020 wherein;

(i). the DGAP has informed that on receipt of the aforesaid Order issued by this Authority, a Notice for Initiation of Investigation under Rule 129 of the Rules was issued by him on 30.10.2019, calling upon the Respondent to reply as to whether he admitted that the benefit of ITC had not been passed on to the consumers by way of commensurate reduction in price.

(ii). the DGAP has also informed that the period covered by the current investigation is from 01.07.2017 to 30.09.2019. 

(iii). the DGAP has stated that the time limit to complete the investigation was 19.06.2020, however, vide Notification No. 35/2020-Central Tax dated 03.04.2020 where, any time limit for completion/furnishing of any report, had been specified in, or prescribed or notified under the CGST Act, 2017 which fall during the period from the 20th day of March, 2020 to the 29th day of June, 2020, and where completion or compliance of such action had not been made within such time, then, the time limit for completion or compliance of such action, should be extended upto the 30.06.2020.

Further, vide Notification No. 55/2020-Central Tax dated 27.06.2020, the time limit for completion of investigation was further extended as under, where,

(a). the words, figures and letters "29<sup>th</sup> day of June, 2020", the words, figures and letters "30<sup>th</sup> day of August, 2020" shall be substituted.

(b). the words, figures and letters "30<sup>th</sup> day of June, 2020", the words, figures and letters "31<sup>th</sup> day of August, 2020" shall be substituted.

(iv). the DGAP has further stated that this Authority vide its order dated 30.06.2020 has allowed further extension of 3 months. Accordingly, the extended time limit to complete the investigation was 30.11.2020.

(v). the DGAP has submitted that in response to his notice dated 30.10.2019, the Respondent furnished his reply vide letters and e-mails dated 11.03.2020 and 07.08.2020. The detailed submissions of the Respondent are quoted as follows: -

(a) the Respondent's firm "Shree Infra" was a builder and was engaged in the business of developing and construction activity.


(b) Phase wise details of the Project "River view Heights" are as per

Table-A below: -

Phase	Building Number	Date of Commencement	Date of BUC/OC Received	RERA Applicability	Total Land Area of the Project
Phase-I	A,J,K,L,M	13.11.2009	A-16.08.2014 J-07.10.2011 K-05.10.2013 L-02.04.2011 M-06.08.2012	Project Completed before RERA Applicable	16,139.30
Phase-II	B1,B2,H1,H2,I	31.12.2014	B1,B2,H1,H2 30.03.2019  Building "I" still under construction	RERA Registered Project	16,087.70
Phase-III	C1,C2,D1,D2, E1,E2,F1,F2	Yet not registered as construction of the remaining Building was not started till date			26,402.00

(c) the provisions of Anti-profiteering would not be applicable in respect of Phase-I of the Project since the said Phase had been completed before GST. The profiteered amount in relation to Phase-II had already been provided vide Report dated 24.01.2019. Further the Phase-III had not been started at all, which would be under the new scheme applicable to the Respondent in which the builders were not eligible for ITC and the question of passing of ITC benefits would not arise at all.

(d) the total F.P. land area owned by the firm was 46,862 Sq. mt. Out of the same, - in Phase I (i.e. A, J, K, L and M building) 12,900.09 Sq. mt. land was used; in Phase II, (B1, B2, H1, H2 & I building) 12,858.86 Sq. mt. land was used and for Phase III (which had yet not started) balance 21,103.05 Sq. Mt. land would be used.

(vi). the DGAP has also submitted that vide notice dated 30.10.2019, the Respondent was informed that if any information/documents were provided on confidential basis, in terms of Rule 130 of the Rules, a non-confidential summary of such information/documents was required to be furnished. However, the Respondent requested not to share the copy of annexures with the other parties since the same were pertaining to the business dealing of the firm and were confidential records. 

(vii). the DGAP has further submitted that the various replies of the Respondent and the documents/evidences on record had been carefully examined. The main issues for determination were: -

(a). whether there was benefit of reduction in rate of tax or ITC on the supply of construction service by the Respondent after implementation of GST w.e.f. 01.07.2017 and if so,

(b). whether the Respondent has passed on such benefit to the recipients by way of commensurate reduction in prices, in terms of Section 171 of the CGST Act, 2017.

(viii). the DGAP has reported that as per the directions of this Authority passed vide Order No. 51/2019 dated 21.10.2019, a Notice of Initiation of Investigation, to examine the violation of the provisions of Section 171 of the CGST Act, 2017 was issued by him and the Respondent was requested to submit details of all phases constructed in the project "River View Heights" in terms of Para No.18 of the above-mentioned order of this Authority.

(ix). the DGAP has further reported that prior to implementation of GST w.e.f. 01.07.2017, Service Tax on construction service was chargeable @ 4.50% (vide Notification No. 14/2015-ST dated 19.05.2015). After implementation of GST w.e.f 01.07.2017, GST on construction services was chargeable @ 18% (effective rate was 12% in view of 1/3rd abatement on value) on construction service vide Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 and the effective GST rate on construction service in respect of affordable and low-cost houses upto a carpet area of 60 square metres was further reduced to 12% GST (effective rate was 8% in view of 1/3rd abatement on value), vide Notification No. 1/2018-Central Tax (Rate) dated 25.01.2018 (in respect of affordable and low-cost house upto a carpet area of 60 square meters). Further, vide Notification No. 03/2019-Central Tax (Rate) dated 29.03.2019, GST on construction services in respect of affordable and low-cost houses upto a carpet area of 60 square metres was 1% (1.5-1/3 of 1.5 i.e. 0.5) and no ITC eligible under the said Notification.

(x). the DGAP has also reported that this Authority in para-18 of its Order dated 21.10.2019 had observed the following:-

(a). the RERA Registration Certificate of the project provided by the Respondent to the DGAP as well as to this Authority mentions "River View Heights" from which it could be inferred that the investigation had only been restricted to phase-II of the Project ignoring the other phases.

(b). keeping in view the fact that the subject investigation covered only Phase-II of the Project as per the nomenclature of the Project given by the Respondent himself and that the Respondent had himself admitted that he was liable to pass on the benefit of additional ITC as per provisions of Section 171 of the CGST Act, 2017, therefore, there were sufficient reasons to believe that there might be some Phases of the Project " River View Heights" which had not been investigated.

(c). the DGAP was directed to investigate the issue of passing on the benefit of additional ITC in respect of the whole Project and submit Report in terms of Rule 133 (5) of the CGST Rules, 2017.

(xi). the DGAP has submitted that on examination of the details submitted by the Respondent and the fact that Project "River View Heights Phase-II" had already been investigated by him and against the Investigation Report dated 24.04.2019, this Authority had also passed Order No. 51/2019 dated 21.10.2019 under Section 171 of the CGST Act, 2017 and confirmed the profiteered amount of Rs 2,13,468/- which included GST @12% from all the 26 home buyers for the period w.e.f. 01.07.2017 to 31.10.2018, it was observed that out of three phases of "River View Heights" project, Phase-II had been actually considered for profiteering as mentioned in Para 15 of



this Authority's Order No. 51/2019 dated 21.10.2019. Hence, the contention of the Respondent appeared to be true.

(xii). the DGAP has further reported that anti-profiteering provisions could not apply to the project "River View Heights Phase-I" & "River View Heights Phase-III" as Phase-I of River View Heights had been completed before the GST regime i.e. before 01.07.2017 and Phase-III of River View Heights was not in existence in the pre GST-era i.e. before the implementation of GST and the Phase-III of River View Heights was not yet registered as construction of the remaining buildings had not started till date. The issue had been examined and to verify the contention of the Respondent the RERA website ([www.gujrera.gujarat.gov.in](http://www.gujrera.gujarat.gov.in)) of Gujarat was visited and it was observed that for the project "River View Heights" **only Phase-II was registered.**

(xiii). In view of the above discussion and observations, the DGAP has submitted that out of three Projects under investigation- (i) The Project "**River View Heights**" Phase-II had already been investigated and profiteering had been confirmed by this Authority. Hence, the same was not required to be looked into again. (ii) The Project "**River View Heights Phase-I**", had been completed before GST and after the verification of BUC/OCs (which are mentioned in Table-'B' below), it was observed that the Respondent had completed all the Buildings viz. A, J, K, L & M of the "River View Heights Phase-I" before the introduction of GST and the Occupancy Certificate (OC) was received by the Respondent in respect all the Buildings of "River View Heights Phase-I" on the dates tabulated below and (iii) The Project "**River View Heights Phase-III**" was not registered under RERA till date.



**Table-'B'**

<b>Project Name</b>	<b>Building Number and Date of BUC/Occupancy Certificate Received</b>
River View Heights Phase-I	A:- 16.08.2014 J:- 07.10.2011 K:- 05.10.2013 L:- 02.04.2011 M:- 06.08.2012

(xiv). the DGAP has stated that Section 171 of the CGST Act, 2017 came into play in the event where there was a reduction in the rate of tax or there was an increase in the benefit of input tax credit. In the present case;

(a) the Project "River View Heights Phase-I" was not in existence in the GST period and neither any Notification issued in GST nor Section 171(1) of the CGST Act, 2017 were not applicable in this case.

(b) since the Project "River View Heights Phase-III" was not yet registered and as per the contention of the Respondent it had not been launched hence, there was no pre-GST tax rate or ITC availability that could be compared with the post-GST tax rate and input tax credit, to determine whether there was any additional benefit that was required to be passed on to the recipients by way of reduced price. Hence, it appeared that "River View Heights Phase – I and III" were not fit for further investigation for the purposes of profiteering.

(xv). the DGAP has further informed that on the basis of the details of outward supply of Construction Services submitted by the Respondent, it was also observed that the service was supplied in the State of Gujarat only.

(xvi). In conclusion, the DGAP has submitted that in view of the aforementioned findings, Section 171(1) of the CGST Act, 2017, requiring that "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”, was not applicable in the present case.*

4. We have carefully examined the DGAP Report dated 27.08.2020 and the other material 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?.

5. We find that the Respondent had three Phases viz. Phase-I, Phase-II and Phase-III comprising building Nos. A-J-K-L-M, B1-B2-H1-H2-I and C1-C2-D1-D2-E1-E2-F1-F2 respectively in “River View Heights”. Out of these three Phases, Phase-I was completed by August 2014, which is well before the implementation of GST and Phase-III had not been started upto 27.08.2020. Further, in respect of Phase-II, it is on record that, it has already been investigated vide Order No. 51/2019 dated 21.10.2019 passed by this Authority under Rule 133 of the CGST Rules 2017 read with section 171 of the CGST Act 2017, vide which profiteered amount of Rs. 2,13,468/- (including GST @12%) for the period 01.07.2017 to 31.10.2018, has been confirmed in relation to 26 home buyers.

6. We find no grounds, in the present case, to differ from the Report of the DGAP. Since the said Phase-I was not in existence in the GST period and the said Phase-III was yet to be started/registered as on 27.08.2020 hence, the Anti-Profiteering provisions under Section 171 of the CGST Act 2017 are not applicable on the said Phase-I and Phase-III of “River View Heights” of the Respondent.

7. Given our above findings, we conclude that the instant case does not fall under the ambit of the Anti-Profiteering provisions of Section 171 of the CGST Act, 2017. Accordingly, **the present proceedings ordered vide para 18 of the Order No. 51/2019 dated 21.10.2019 stand concluded and the Report dated 27.08.2020 by the DGAP is accepted.**

8. 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 from the DGAP under Rule 129 (6) of the above Rules. Since, the present Report has been received by this Authority on 31.08.2020, the Order was to be passed on or before 01.03.2021. However, in view of the Para 5 of Hon'ble Supreme Court's Order dated 10.01.2022 passed in Suo Moto Writ Petition (Civil) No. 3 of 2020 wherein the Hon'ble Supreme Court has ordered as under:-

(I). *The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.*

(II). *Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022.*

(III). *In case where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event, the actual*

balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.

(IV). It is further clarified that the period from 15.03.2020 till 28.02.2022 shall stand excluded in computing the period under Section 23(4) and 29A of the Arbitration and Conciliation Act 1996, Section 12A of the Commercial Courts Act 2015 and provisos (b) and (c) of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period (s) of limitation for instituting proceedings over limits (within which the court or tribunal can condone delay) and termination of proceedings.

Hence this Order having been passed today falls within the limitation prescribed under Rule 133(1) of the CGST Rules, 2017.

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

S/d  
(Amand Shah)  
Technical Member &  
Chairman

S/d  
(Pramod Kumar Singh)  
Technical Member

S/d  
(Hitesh Shah)  
Technical Member



Certified copy

  
(Dinesh Meena)  
NAA, Secretary

OK

File No. 22011/NAA/195/ Shree Infra /2020 / 4924-30 Date: 13.05.2022  
Copy To:-

1. M/s Shree Infra, River View Heights, Peddar Road, Opp. Valkeshwar Soceity, Surat-395105.
2. Directorate General of Anti-Profitteering, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, New Delhi-110001.
3. Guard File.