

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

Case No. : 53/2022
Date of Institution : 30.12.2020
Date of Order : 29.07.2022

In the matter of:

1. Shri Nitesh Kumar Singhal, Flat No. 1002, SSBC, The Elegance, Bheru Circle Khumbha Marg, Partap Nagar, Jaipur-302 033.
2. Shri Chirag Yadav, Flat No. 1003, SSBC, The Elegance, Bheru Circle Khumbha Marg, Partap Nagar, Jaipur-302 033.
3. 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. SSBC Real Estate Pvt. Ltd., S-70, Krishna Marg, Bapu Nagar, Siwar Area, Jaipur, Rajasthan- 302015.

Respondent

Quorum:-

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



Present:-

1. Sh. Nitesh Singhal in person as Applicant No. 1 in person.
2. Sh. Chirag Yadav in person as Applicant No. 2 in person.
3. Lal Bahadur, Assistant Commissioner for DGAP.
4. Sh. Mahender Sharma, on behalf of the Respondent.

ORDER

The present Report dated 30.12.2020, has been furnished by the Applicant No. 03 i.e. the Director General of Anti-Profiteering (DGAP) after a detailed investigation under Rule 129 of the Central Goods and Service Tax (CGST) Rules, 2017. The brief facts of the case are that a reference was received from the Standing Committee on Anti-profiteering on 03.12.2019 to conduct a detailed investigation in respect of applications filed under Rule 128 of the CGST Rules, 2017 by the Applicant No. 1 and 2, alleging profiteering by the Respondent in respect of purchase of Flat Nos. 1002 and 1003 in the Respondent's project "**The Elegance**" situated at Partap Nagar, Jaipur. Both the Applicants alleged that the Respondent had not passed on the full benefit of ITC to them by way of commensurate reduction in prices and charged GST @ 12% on the amount due to them against payments.

2. On receipt of the aforesaid reference from the Standing Committee on Anti-profiteering, the DGAP had issued Notice under Rule 129 of the CGST Rules 2017, on 10.12.2019 calling upon 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 prices and if so, to *suomoto* determine the quantum thereof and indicate the same in his reply to the Notice as well as to furnish all documents in support of his reply.

3. The DGAP had afforded an opportunity to the Respondent to inspect the non-confidential evidences/information which formed the basis of the said Notice, during the period 20.12.2019 or 24.12.2019. Similarly an opportunity was also given to both the Applicants to inspect the non-confidential documents/reply furnished by the Respondent on 22.12.2020 or 23.12.2020 or 28.12.2020 but neither Respondent nor Applicants had availed the aforesaid opportunities. However, the Applicant No. 1 vide his email dated 21.12.2020 had requested to provide the non-confidential data through email. Accordingly, the DGAP had sent the said data and requested him to confirm receipt of ITC benefit passed on by the Respondent.

4. The DGAP has submitted that the statutory time limit to complete the investigation was 02.06.2020 which was extended up to 30.11.2020 by virtue of Notification No. 35/2020-CT dated 03.04.2020, Notification No. 55/2020-CT dated 27.06.2020, Notification No. 65/2020-CT dated 01.09.2020 and Notification

No. 91/2020-CT dated 14.12.2020 issued by Central Government under Section 168 A of the CGST Act, 2017 which provided that where, "any time limit for completion or compliance of any action, by any authority, had been specified in, or prescribed or notified under section 171 of the said Act, which falls during the period from the 20th day of March, 2020 to the 30th day of March, 2021 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, shall be extended up to the 31th day of March, 2021."

5. In response to the above said Notice dated 21.10.2019 and subsequent reminders and Summons of the DGAP, the Respondent vide his emails dated 06.01.2020, 23.01.2020, 04.02.2020, 20.07.2020, 08.09.2020, 26.10.2020, 23.11.2020, 22.12.2020 and 24.12.2020 had furnished following documents:-

- (i) Copies of GSTR-1 returns for the period July, 2017 to November, 2019.
- (ii) Copies of GSTR-3B returns for the period July, 2017 to November, 2019.
- (iii) Copies of ST-3 and VAT returns for the period April, 2016 to June, 2017.
- (iv) Tran-1 and Tran-2 has not been filed. Tax rates - pre-GST and post-GST.
- (v) Copy of audited Balance sheet for FY 2016-17, 2017-18 & 2018-19.
- (vi) Copies of Sale agreement/Contract, all Demand Letters, Statement of Accounts and Possession Letter issued to the Applicants.
- (vii) Copy of Electronic Credit Ledger for the period July, 2017 to November, 2019.
- (viii) Copy of Electronic Cash Ledger for the period July, 2017 to November, 2019.
- (ix) Declaration in Annexure-IV to the Notification No. 3/2019-CT (Rate) dated 29.03.20219 along with Calculation of Eligible GST input for the Elegance Project upto 31st March, 2019.
- (x) CENVAT/ Input Tax Credit register for the period April, 2016 to November, 2019.
- (xi) Details of VAT, Service Tax and GST turnover, output tax liability payable and input tax credit availed for the project "The Elegance".

- (xii) Copy of Joint Development Agreement dated 19.05.2014.
- (xiii) Copy of Completion Certificate no. 2241 dated 31.05.2019.
- (xiv) Copy of Project Report submitted to RERA.
- (xv) List of home buyers & commercial shop buyers in the project "The Elegance" along with details of benefit passed on.
- (xvi) Copies of Confirmation of Accounts, Ledgers and journal entry vide which benefit passed on to the customers.
- (xvii) Booking Agreements of the Applicants.
- (xviii) Completion Certificate.
- (xix) Details of Type of Tax Levied on output Goods and Services.
- (xx) Demand Letter and Possession Letter of Applicants.
- (xxi) RERA Reports.,

and requested to keep confidential the documents mentioned above except (xvii) to (xxi) in terms of Rule 130 of the CGST Rules 2017.

6. Vide the above said documents/information, the Respondent has *inter alia* stated that:-

a. he was a real estate developers and wholly engaged in the construction of residential flats. Presently he was undertaking two projects out of which one was "**The Elegance**" which was started in 2013-14 at Jaipur. In the instant project there were 96 residential flats consisting of total build-up area of 1,07,136 sq. ft. Another project was "SSBS Su-prem" which consisted of total 14 units and the first booking was made only on 01.08.2017 of these units which is in Post-GST regime. ✓

b. he had opted new GST rate scheme i.e. 5% GST without input tax credit with effect from 01.04.2019 in terms of Notification No. 03/2019-Central Tax (Rate) and accordingly he had not availed any input tax credit from 01.04.2019 onwards.

c. he entered into an agreement with M/s. Jaipur Constructions & M/s. GPM Infrastructure Pvt. Ltd. (Land Owners) on "**Revenue Sharing**" basis vide agreement dated 19th May 2014 wherein, it is agreed between them that the construction of the project will be carried out by him on his own account and own expenses and the revenue received on sale of units will be shared between him and the Land owners in 50:50 ratio.

d. he had received the Completion Certificate on 31.05.2019 issued by Chartered Engineer. He claimed that he had passed on the benefit of Input Tax Credit at the rate of Rs. 19.85/- per sq. ft. to each unit holder on 22.04.2019 by crediting their ledger accounts through journal entry and reduced it from their outstanding balance as on date.

e. the Applicant No. 1 had booked Flat No. 1002 through Sales Agreement dated 26.04.2017 for Rs. 31,62,345/- (inclusive of Taxes). The Applicant No. 1 regularly made defaults in payment and had still not paid full amount even after possession of flat. He (the Respondent) had issued following demand notes to the Applicant No. 1 as tabulated below:-

Table-'A'

Demand Date	Demand Amount	Amount Received	Amount Received in Delay	Delayed Amount Received Date
15.07.2017	27,29,575/-	22,60,000/-	4,69,575/-	06.06.2019
20.05.2019	1,40,000/-	--	--	--
23.08.2019	3,08,303/-	--	--	--
09.09.2019	3,08,303/-	--	--	--

The above demands were still not been paid by the Applicant No. 1. The Applicant No. 1 was not co- operating consequently the registry of his flat was pending due to his non co-operation.

f. the payment schedule for Flat no.1002 measuring 970 sq. feet for base price of Rs.26,89,700/- (including one car parking), which was issued to the Applicant No. 1 by him, is tabulated below:-

Table-'B'

(Amount in Rs.)

S. No.	Payment Stage	(Basic) %	Basic Amount	Other Charges	Total Amount
1	At the time of Registration	15%	4,03,455	-	4,03,455
2	Start of Excavation	10%	2,68,970	-	2,68,970
3	Roof Casting of Lower Basement	7.5%	2,01,728	-	2,01,728
4	Roof Casting of Still Floor	7.5%	2,01,728	-	2,01,728
5	Roof Casting of 2nd Floor	7.5%	2,01,728	-	2,01,728
6	Roof Casting of 4th Floor	7.5%	2,01,728	-	2,01,728
7	Roof Casting of 6th Floor	7.5%	2,01,727	-	2,01,727
8	Roof Casting of 7th Floor	7.5% + Gas Chg.	2,01,727	25,000	2,26,727
9	Roof Casting of 8th Floor	7.5%	2,01,727	-	2,01,727
10	Roof Casting of 10th Floor	7.5% + Elec. Chg.	2,01,727	37,260	2,38,987
11	Roof Casting of 12th Floor	5% + Club House Chg.	1,34,485	50,000	1,84,485
12	Completion of External Plaster	5% + Escrow & Corpus	1,34,485	62,100	1,96,585
	Final Possession	5% + Main. Chg.	1,34,485	37,260	1,71,745
	TOTAL=	100%	26,89,700	2,11,620	29,01,320

7. The DGAP has scrutinised the above said documents/information submitted by the Respondent, to determine the main issues which are:-

- Whether there was benefit of reduction in the rate of tax or input tax credit on the supply of construction service by the Respondent, on implementation of GST w.e.f. 01.07.2017 and if so,
- Whether such benefit was passed on by the Respondent to the recipients, in terms of Section 171 of the Central Goods and Services Tax Act, 2017.

and observed that as para 5 of Schedule-III of the Central Goods and Services Tax Act, 2017 (Activities or Transactions which shall be treated neither as a supply of goods nor a supply of services) which reads 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 Central Goods and Services Tax Act, 2017 reads 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 completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier*". Thus, the input tax credit pertaining to the residential units and commercial shops which are under construction but not sold is provisional input tax credit which may be required to be reversed by the Respondent, if such units remain unsold at the time of issue of the completion certificate, in terms of Section 17(2) & Section 17(3) of the Central Goods and Services Tax Act, 2017, which read as under:

Section 17 (2) "Where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies".

Section 17 (3) "The value of exempt supply under sub-section (2) shall be such as may be prescribed and shall include supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building". Therefore, the input tax

credit pertaining to the unsold units shall not fall within the ambit of the investigation and the Respondent was required to recalibrate the selling prices of such units to be sold to the prospective buyers by considering the net benefit of additional input tax credit available to him post-GST.

In the present case, as the Respondent had opted for composition scheme w.e.f. 01.04.2019, hence he was not eligible to avail any input tax credit post 01.04.2019. Accordingly he has charged 5% GST (without benefit of ITC) for the units to be sold to the prospective buyers and also on all the demand letters issued on or after 01.04.2019. Therefore, complete input tax credit availed by him during 01.07.2017 to 31.03.2019 post reversal on account of unsold units pertains to the sold units upto 31.03.2019 only.

9. Regarding allegation of profiteering, DGAP has observed that in pre GST period i.e. prior to 01.07.2017, the Respondent was eligible to avail CENVAT credit of Service Tax paid on Services and no credit was available for Central Excise Duty and VAT paid on the inputs whereas in post-GST, the Respondent could avail input tax credit of GST paid on all inputs & input services including the sub-contracts.

Hence, on the basis of the details of input tax credits availed, turnovers and saleable & sold area of the instant project as furnished by the Respondent to the DGAP for the period from April 2016 to November 2019, DGAP has calculated the ratios of Cenvat/Input Tax Credit to turnovers in respect of instant project as tabulated below:-

Table-C

S. No.	Particulars	April, 2016 to June, 2017 (Pre-GST)	July, 2017 to March, 2019 (Post-GST)
(1)	(2)	(3)	(4)
1	CENVAT of Service Tax Paid on Input Services (A)	10,07,988	-
2	Input Tax Credit of VAT Paid on Purchase of Inputs (B)	-	-
3	Input Tax Credit of GST Availed (C)	-	47,06,103
4	Total CENVAT/Input Tax Credit Availed (D)= (A+B) or (C)	10,07,988	47,06,103
5	Total Turnover as per List of Home Buyers (Net of Cancellation) excluding units sold post-CC (E)	2,11,64,860	3,06,90,046
6	Total Saleable Area (In SQF) (F)	1,07,136	1,07,136
7	Total Sold Area relevant to Turnover (G)	35,693	44,693
8	Relevant CENVAT/ITC [(H)= (D)*(G)/(F)]	3,35,817	19,63,204
	Ratio of CENVAT/Input Tax Credit to Turnover [(I)= (H)/(E)]	1.59%	6.39%

10. In view of the above Table- 'C', the DGAP has averred that since the input tax credit as a percentage of the turnover that was available to the Respondent

during the pre- GST period (April, 2016 to June, 2017) was 1.59% whereas during the post-GST period (July, 2017 to March, 2019), the percentage was 6.39%. hence the Respondent was benefited from additional input tax credit to the tune of 4.80% [6.39% (-) 1.59%] of the turnover in post-GST period. Accordingly, the DGAP has examined the profiteering by comparing the applicable tax rate and input tax credit available in the pre-GST period (April, 2016 to June, 2017) when Service Tax @4.5% and VAT@1% were payable (total tax @ 5.5%) with the post-GST period (July, 2017 to March, 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. Therefore, on the basis of the figures contained in table-'C' given in para 09 supra, the comparative figures of the ratios of input tax credits availed/available to the turnover 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, are tabulated below:-

Table-'D'

S. No.	Particulars		Post- GST
1	Period	A	01.07.2017 to 31.03.2019
2	Output GST Rate (%)	B	12.00
3	Ratio of CENVAT credit/ Input Tax Credit to Total Turnover as per table - 'C' above (%)	C	6.39%
4	Increase in input tax credit availed post-GST (%)	D= 6.39% less 1.59%	4.80%
5	Analysis of Increase in input tax credit:		
6	Total Base Price raised/collected during July, 2017 to March, 2019 (Rs.)	E	3,06,90,046
7	GST @ 12% over Base Price	F=E*12%	36,82,805
8	Total amount to be collected/raised	G=E+F	3,43,72,851
9	Recalibrated Base Price	H= (E)*(1-D) or 95.20% of (E)	2,92,16,923
10	GST @12%	I=H*12%	35,06,031
11	Commensurate demand price	J=H+I	3,27,22,954
12	Excess Collection of Demand or Profiteering Amount	K=G-J	16,49,897

Accordingly to the above calculation, it is evident that on the basis of the aforesaid CENVAT/input tax credit availability in the pre and post-GST periods and the details of the amount raised/collected by the Respondent from the Applicant No. 1 and 2 and other home buyers during the period 01.07.2017 to 31.03.2019, the Respondent had benefited by an additional amount of input tax credit of Rs. 16,49,897/- which includes GST @12% on the base amount of Rs. 14,73,122/-.

This amount is inclusive of Rs. 1,08,480/- (including GST on the base amount of Rs. 96,857/-) which is the benefit of input tax credit required to be passed on to the Applicant No. 1, and Rs. 1,55,904/- (including GST on the base amount of Rs. 1,39,200/-) which is the benefit of input tax credit required to be passed on to the Applicant No. 2.

11. The DGAP has also noticed that the Respondent had booked total 86 units in the instant project as on 30.11.2019, out of which 21 units were sold after receipt of CC and for 26 units no demands were raised during post GST period from 01.07.2017 to 31.03.2019. Therefore, if the input tax credit in respect of these 26 units is considered to calculate profiteering in respect of remaining 39 units where demands have been raised after GST, the input tax credit as a percentage of turnover shall be erroneous. Furthermore, demand to be raised/received on or after 01.04.2019 will bear incidence of only 5% GST as compared to 12% GST (to be charged in normal scheme). Therefore, the benefit of reduction in rate of tax of 7% [12%(-) 5%] without input tax credit will be available in respect of these units. No benefit of input tax credit is required to be passed on the demand to be raised on or after 01.04.2019 as the additional benefit of input tax credit available to the Respondent is 4.80% which is lower than 7% reduction in rate of tax of GST.

12. Further, the DGAP in conclusion, has submitted that the Respondent had passed on the benefit of Rs. 19.85/- per sq. ft. to all the home buyers irrespective of their date of booking. The Respondent had passed on Rs. 8,67,902/- to 38 Customers from whom the amount was raised/collected by him during the post GST period from 01.07.2017 to 31.03.2019 and to corroborate his such claim he had submitted copies of Credit Notes and journal ledger entries for all the home buyers vide which the benefit of input tax credit was passed on, which were duly verified by the DGAP and found to be correct. The DGAP had also sent e-mails to the Applicant No. 1 and 2 and 30 home buyers other than the Applicants selected randomly on 23.12.2020 to whom benefit was passed on, to confirm whether the amount of benefit of ITC was received from the Respondent. The Applicant No. 1 vide E-mail dated 28.12.2020 submitted that he has not received the benefit of Input Tax Credit. Further, out of 30 home buyers other than the Applicants, 16 have replied and confirmed the receipt of benefit of ITC from the Respondent. Further, it also appears that in some cases, the Respondent had passed on the benefit of input tax credit more than the required commensurate benefit whereas in some cases, the

benefit of input tax credit passed on was less than the required commensurate benefit. A summary of category-wise input tax credit benefit required to be passed on and the benefit passed on, is tabulated below:-

Table-'E'

S. No.	Category of Customers	No. of Units	Area (in Sq. ft)	Benefit to be passed on as per Annex-19	Benefit Passed on by the Respondent	(Excess)/ Shortage of Benefit (profiteering)	Remark
A	B	C	D	E	F	G=F-E	H
1	Applicant No. 1	1	970	1,08,480	-	1,08,480	Benefit to be passed on
2	Applicant No. 2	1	993	1,55,904	19,711	1,36,193	Benefit to be passed on
3	Buyers other than Applicants	16	17,655	11,01,944	3,50,452	7,51,492	Benefit to be passed on
4		21	25,075	2,83,569	4,97,739	(2,14,170)	Excess benefit passed on
5		26	29,276	-	5,81,128	(5,81,128)	No consideration received post GST- Excess benefit passed on
6		21	22,075	-	4,38,189	(4,38,189)	Sold post CC-Excess benefit passed on
7		10	11,092	-	-	-	Unsold Units
Total		96	1,07,136	16,49,897	18,87,219		

In view of the above Table 'E', it is observed that the Respondent was required to pass on the additional benefit of input tax credit of Rs. 1,08,480/- to the Applicant No. 1. The Respondent had passed on the ITC benefit of Rs. 3,70,163/- to 17 buyers including Applicant No. 2 which is less than what he ought to have passed on by an amount of Rs. 8,87,685/-. Further, the benefit passed on by him is higher than what he should have passed on in respect of 68 home buyers mentioned at S. No. 4 to 6 in the above Table, by Rs. 12,33,487/-. Details were given in Annexure-22 of the aforesaid Report of the DGAP. This excess benefit passed on to some recipients, cannot be set off against the additional benefit required to be passed on to the other recipients and it can only be adjusted against any future benefit that might accrue to such recipients.

13. In conclusion, the DGAP has submitted that the Respondent had benefitted to additional ITC to the tune of 4.80% of the turnover during the post GST period from 01.07.2017 to 31.03.2019, which was required to be passed on to the respective flat buyers. Accordingly he had realized the additional amount of Rs. 1,08,480/- and Rs. 1,55,904/- from the Applicant No. 1 and 2 respectively and Rs. 13,85,513/- from 37 flat buyers other than the Applicants. Details were given in the Annexure-22 of the present Report of the DGAP. However, the Respondent had to pass on the additional ITC of Rs. 16,49,897/- accrued to him during the period from 01.07.2017 to 31.03.2019, to 39 flat buyers including Applicant No. 1 & 2 by way of commensurate reduction in prices under section 171 of the CGST Act 2017.

14. The Respondent had failed to pass on the ITC benefit of Rs. 16,49,897/- to 39 flat buyers/customers/recipients including Applicant No. 1 & 2 by way of commensurate reduction in price. Accordingly section 171 of the CGST Act 2017 which requires 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 recipients by way of commensurate reduction in prices", had been contravened by the Respondent in the present case.

15. As aforementioned, the present investigation computed the profiteering covering the period 01.07.2017 to 31.03.2019. Profiteering, if any for the period post 01.04.2019 has not been examined as the no benefit of input tax credit for construction service will be available to the Respondent in future as he had opted for composition scheme as provided by Notification No. 03/2019- Central Tax (rate) dated 29.03.2019.

16. The above Report was carefully considered by this Authority and a Notice dated 06.01.2020 was issued to the Respondent to explain why the Report dated 31.12.2020 submitted by the DGAP should not be accepted and his liability for profiteering in violation of the provisions of Section 171 of the CGST Act 2017 should not be determined. The Respondent was directed to file his reply to the allegations levelled in the aforesaid DGAP's Report dated 31.12.2020.

17. In response to the above said Notice dated 06.01.2020 and subsequent several orders, the Respondent vide his letter dated 03.05.2022 has furnished his submissions stating that he has passed on the benefit and recovered the excess benefit vide journal entry dated 01.04.2021 and requested to drop the proceedings.


18. This Authority decided to hear the interested parties in the interest of natural justice and afforded hearing on 10.06.2022. During the aforesaid hearing held on 10.06.2022 through video conferencing, the Applicant No. 1 has raised his objection that he had not received even a single penny from the Respondent in the form of ITC benefit or otherwise. The Respondent has accepted and stated that he will pass on the aforesaid benefit along with interest within 15 days and furnish the payment particular to this authority. But even after lapse of more than 02 months he failed to provide any documents corroborating the payment/passed on ITC benefit to the flat buyers.

19. The Authority has carefully considered the Report of the DGAP, the submission filed by the Respondent and the other material placed on record

including arguments made during hearings and finds that the Applicant No. 1 and 2 had filed complaint against Respondent alleging that the Respondent had not passed on the benefit of ITC to them by way of commensurate reduction in prices on the purchase of Flat No.s 1002 & 1003 respectively in his "The Elegance" Project which was being executed by the Respondent at Partap Nagar in Jaipur. The said complaint was examined by the Standing Committee on Anti-Profiteering and forwarded to the DGAP for detailed investigation, who vide his investigation Report dated 30.12.2020 furnished to this Authority, had stated that the "The Elegance", Project of the Respondent, was constructed under Joint Development Agreement (JDA) with M/s Jaipur Constructions & M/s GPM Infrastructure Pvt. Ltd. under revenue sharing basis at 50:50 ratio. Construction of project was to be carried out by the Respondent on his own account and own expenses. Since the entire cost of all purchases of inputs, capital goods and input services for construction of all units of the impugned project was incurred by the Respondent hence he had availed Input Tax Credit on tax paid on said inputs, capital goods and input services during pre and post GST periods. As the input Tax Credit (ITC) @ 6.39 % and 1.59% of the turnover was available to the Respondent during the post-GST period and the pre-GST period respectively as per the Table- C mentioned at para 9 supra, therefore, he had benefited from the additional ITC to the tune of 4.80% (6.39% - 1.59%) of the turnover during the period from 01.07.2017 to 31.03.2019, which was required to be passed on to the flat buyers of this Project. The DGAP had also found that since the Respondent has not reduced the basic prices of his flats/units by 4.80% due to the additional benefit of ITC and had charged GST at the increased rate of 12% on the pre-GST basic prices hence he has contravened the provisions of Section 171 of the CGST Act, 2017 and Rules made thereunder. The DGAP had observed that as mentioned above, the benefit of Rs. 16,49,897/- was required to be passed on to 39 flat buyers/customers/recipients including Applicants by the Respondent for the period from 01.07.2017 to 31.03.2019 if not already passed on.

20. The DGAP has computed the ratio of CENVAT as a percentage of the turnover for the pre-GST period and compared it with the ratio of ITC to the turnover for the post-GST period, and then computed the percentage of the benefit of additional ITC which the Respondent was required to pass on to the flat buyers/customers/recipients. The above ratios have been computed by the DGAP on the basis of data/details provided by the Respondent which have been duly

verified from his Service Tax, VAT and GST Returns filed by him for the period April 2016 to June 2017 and July 2017 to November 2019 respectively. Since, the ratios calculated by the DGAP are based on the factual record submitted by the Respondent, hence the computation made by the DGAP can be relied upon while computing the profiteered amount. The above methodology has been approved by this Authority in all the cases where the benefit of ITC was required to be passed on to the flat buyers/customers/recipients. The above methodology is appropriate, logical, reasonable, and in consonance with the provisions of Section 171 of the CGST Act, 2017.

21. Since the home buyers/customers/recipients are identifiable as per the documents placed on record, the Respondent is directed to pass on an amount of Rs. 16,49,897/- to 39 home buyers/customers/recipients, out of which the amount required to be passed on to the Applicant No. 1 and 2 is Rs. 1,08,480/- and 1,55,904/- respectively if already not passed on. Such amount shall be passed on/ returned along with the interest @ 18% per annum from the dates from which the above amount was collected by him from them till the payment is made, as prescribed under Rule 133 of the CGST Rules, 2017 within a period of 3 months from the date of passing of this order as per the details mentioned in Annexure-21 & 22 attached with the Report dated 31.12.2020. The details of the homebuyers/customers/ recipients along with profiteered amount due to each of them is attached as Annexure A to this Order. 

22. Accordingly, this Authority under Rule 133 (3) (a) of the CGST Rules, 2017 orders that the Respondent shall reduce the prices to be realized from the buyers of the flats/customers/recipients of the above Project commensurate with the benefit of ITC received by him as detailed above.

23. The Authority finds that, vide Section 112 of the Finance Act, 2019 specific penalty provisions have been added for violation of the provisions of Section 171 (1) which have come in to force w.e.f. 01.01.2020, by inserting Section 171 (3A). Since, no penalty provisions were in existence between the period from 01.07.2017 to the period of investigation and to which this Order is passed, 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 for such period.

24. This Authority as per Rule 136 of the CGST Rules 2017 directs the
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Commissioners of CGST/SGST Jaipur, Rajasthan to monitor compliance of this order under the supervision of the DGAP by ensuring that the amount profiteered by the Respondent as determined by this Authority, is passed on to all the eligible buyers if not already passed on. It may be ensured that the benefit of ITC is passed on to each flat buyer/customer/recipient as per Annexure-A attached with this Order along with interest @18%. In this regard an advertisement of appropriate size to be visible to the public may also be published in minimum of two local Newspapers/vernacular press in Hindi/English/local language with the details i.e. Name of Respondent – M/s SSBC Real Estate Private Limited, for his Project “The Elegance” situated at Partap Nagar, Jaipur and amount of profiteering so that the concerned flat buyers/customers/recipients can claim the benefit of ITC if already not passed on. Flat buyers/customers/recipients may also be informed that the detailed NAA Order is available on Authority’s website www.naa.gov.in.

25. This Authority in terms of Rule 133 (5)(a) of the CGST Rules 2017 also directs the DGAP to investigate profiteering in relation to other Projects executed by the Respondent, if any, under the provision of section 171 of the CGST Act 2017. Since the Respondent has been found to have contravened the provisions of Section 171 of the CGST Act 2017 in respect of the subject project “The Elegance” and hence there is every possibility that same is the case, with his other projects.

26. Contact details of concerned Jurisdictional CGST/SGST Commissioner may also be advertised through the said advertisement. A report in compliance of this Order shall be submitted to this Authority and the DGAP by the Commissioners CGST /SGST within a period of 4 months from the date of receipt of this Order.

27. In view of the prevailing Covid 19 pandemic, the Hon'ble Supreme Court had by its Order dated 10.01.2022 passed in M.A. no. 21/2022 in M.A. no. 665/2021 in Suo Moto Writ Petition (C) No. 3 of 2020 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.

28. A copy each of this order be supplied, free of cost, to the DGAP, the Applicant No. 1 and 2, the Respondent, Commissioners CGST/SGST, Jaipur, Rajasthan, Principal Secretary Town Planning Govt. of Rajasthan and Rajasthan RERA for necessary action. File be consigned after completion.

Annexed:- Annexure-'A' in Page-1.

Sd-
(Amand Shah)
Technical Member & Chairman

Sd-
(Pramod Kumar Singh)
Technical Member



(Hitesh Shah)
Technical Member

Certified Copy

(Dinesh Meena)
Secretary, NAA

File No. 22011/NAA/05/SSBC/2021 | 7970 - 7979 Date:- 29.07.2022
Copy to:-

1. M/s. SSBC Real Estate Pvt. Ltd., S-70, Krishna Marg, Bapu Nagar, Siwar Area, Jaipur, Rajasthan-302015.
2. Shri Nitesh Kumar Singhal, Flat No. 1002, SSBC, the Elegence, Bheru Circle Khumba Marg, Pratap Nagar, Jaipur-302033.

3. Shri Chirag Yadav, Flat No. 1003, SSBC, the Elegence, Bheru Circle Khumba Marg, Pratap Nagar, Jaipur-302033.
4. Director General of Anti profiteering, Central Board of Indirect Taxes & Customs, 2nd Floor, Bhai Vir Singh Sahitya Sadn, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.
5. The Chief Commissioner, CGST, Jaipur Zone, New Central Revenue Building, Statue Circle, 'C' Scheme, Jaipur-302005.
6. Additional Commissioner, Commercial of Tax, Kar Bhawan, Ambedkar Circle, Jaipur-302005.
7. Principal Secretary, Town Planning Govt. of Rajasthan , Jawaharlal Nehru Marg, Near JDA Building, Opp. Birla Mandir, Jaipur – 302004.
8. Rajasthan Real Estate Regulatory Authority, 2nd & 3rd Floor, RSIC Building, Udyog Bhavan, Tilak Marg,C-Scheme,Jaipur-302005
9. NAA Website.
10. Guard File.



M/s. SSBC Realestate Pvt. Ltd.) (Project: "The Elegance")

ANNEXURE-A

S.No.	Name Of Consumer	Unit No/flat number.	Profiteering Amount to be passed on	Benefit of ITC claimed to have been Passed on, If Any
A	B	C	F	G
1	Nitesh Singhal	1002	108,480	0
2	Chirag Yadav	1003	155,904	19,711
3	Amit Khandelwal	201	182,784	22,510
4	Neel Kamal Sharma	203	120,000	19,711
5	Akshay Sharma	204	152,640	25,468
6	Indreejeet Sarwal	302	24,000	19,255
7	Rajesh Kothari	305	113,599	26,619
8	Naman Gokharoo	306	71,960	18,520
9	Narendra Buntolia	308	38,400	26,619
10	Nalin Kumar Sarwal	402	19,737	19,255
11	Pramod Kumar Agarwal	406	24,000	18,520
12	Dr.Dinesh Gupta	506	27,308	18,520
13	Amit Pareek	605	51,942	26,619
14	Priyanka Dudani	607	24,000	18,520
15	Om Prakash Gupta	705	30,240	26,619
16	Somesh Shrivastava	803	59,038	19,711
17	deepshikha Kabra	804	131,096	25,468
18	Gaurav singh Fauzdar	1007	31,200	18,520
19	Sumanlata Gupta	101	10,015	22,510
20	Surendra Choudhary	102	11,272	19,255
21	Roop Singh Meena	106	2,400	18,520
22	Dr.Rajendra Kumar Kothari	108	24,000	26,619
23	Manoj Das	205	9,600	26,619
24	Pankaj Kumar Pareek	206	3,791	18,520
25	satish gurjar	303	11,136	19,711
26	Anjana sharma	304	9,600	25,468
27	Kamini Virmani	405	24,000	26,619
28	O.P. Paliwal	504	19,200	25,468
29	Avdesh Sharma	505	9,600	26,619
30	R.S. Nandu	507	9,600	18,520
31	Raj Kumar Singh	508	22,334	26,619
32	Sushil Kumar Sharma	601	538	22,510
33	Pradeep Jaswani	603	5,125	19,711
34	Vimal Banka	608	19,200	26,619
35	Shweta Mangal	801	14,281	22,510
36	Sachin Kumar Lohiya	808	14,400	26,619
37	Ramesh Khana	904	24,000	25,468
38	Anshu Jain	908	25,224	26,619
39	Asha Todarka	1008	14,255	26,619
TOTAL=			1,649,897	867902

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