

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

I.O. No. : 08/2022
Date of Institution : 01.12.2020
Date of Order : 27.07.2022

In the matter of:

1. Shri Rajeev Goyal, D-42, Retreat Apartment, 20 I. P. Extension, Patparganj, Delhi-110092.
2. Shri Ankush Goel, G 1115, Prateek Edifice, Sector-107, Noida.
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 Prateek Infra Projects India Pvt. Ltd., G-50,
Lower Ground Floor, Lajpat Nagar-III, New
Delhi- 110024.

Respondent

Quorum:-

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



Present: -

1. Shri Rajeev Goyal, Applicant No. 1, in person,
2. Shri Ankush Goel, Applicant No. 2 in person,
3. Shri Rajesh Kumar Jain, AVP, Finance and Accounts, for the Respondent.

ORDER

1. The present Report dated 27.11.2020 has been furnished by the Director General of Anti-Profiteering (DGAP), under Rule 129 (6) of the Central Goods & Services Tax (CGST) Rules, 2017. The brief facts of the case are that Applicant No. 1 had alleged profiteering in respect of Construction Services supplied by the Respondent. The Applicant No. 1 had also alleged that the Respondent had not passed on the benefit of ITC to him by way of commensurate reduction in the price of the Unit No. C-1105 purchased from the Respondent in his Project "Prateek Edifice", situated at Sector-107, Noida, Uttar Pradesh on introduction of GST w.e.f. 01.07.2017 as required in terms of Section 171 of the CGST Act, 2017. The period covered by the current investigation was from 01.07.2017 to 31.12.2019. According to the DGAP, the ITC as a percentage of the turnover that was available to the Respondent during the pre-GST period (April, 2016 to June, 2017) was 2.75 % and the figure for the post-GST period (July, 2017 to December, 2019) was 10.12% for the Project "Prateek Edifice". As per the said Report of the DGAP, in post-GST period, the Respondent had benefited from additional ITC to the tune of 7.37% [10.12% (-) 2.75%] of the turnover amounting to profiteering of Rs. 11,99,09,042/- which included 12% GST on the base amount of Rs. 10,70,61,545/- during the period 01.07.2017 to 31.12.2019. This amount was inclusive of profiteered amount of Rs. 57,900/- (including GST) in respect of the Applicant No. 1 and profiteered amount of

Rs 1,75,220/-(including GST) in respect of the Applicant No. 2.

2. The hearing in the matter through Video Conferencing was held on 27.04.2022. It was attended by Shri Rajeev Goyal, Applicant No. 1 in person and Shri Rajesh Jain, Chief Accounts Officer for the Respondent. The Applicant No. 1 during the hearing submitted that he had found fault with the calculation made in the DGAP's Report and verification of the reimbursement of profiteered amount to the home owners as done by the DGAP. The Applicant No. 1 sought waiver of confidentiality of records of the Respondent and consequent disclosure to the Applicant No. 1 of all such records. The Authority directed the Applicant No. 1 to give documentary proof, including sworn Affidavits based upon which the above allegations were made by the Applicant No. 1. The Authority also directed the Applicant No. 1 to give a list of documents/records from the list mentioned in the DGAP's Report which the Applicant No. 1 seeks. The Authority, also, directed the Respondent to submit his objection, if any, to waive the confidentiality claimed by the Respondent.
3. The Applicant No. 1 submitted his Affidavit dated 18.05.2022 (received on 24.05.2022) vide which he has alleged fraud and forgery on the part of the Respondent and fault in calculations of the profiteered amount, saleable area of the Project and the total turnover of the Respondent by the DGAP. The said Affidavit is reproduced below:-

a. *"I say that Builder has prima-facie indulged into diverging manipulated, wrong, false, cooked up and forged information and documents to the DGAP as is evident from following submissions:-"*

ii. *In Table A of Para 18 at Page 9 of the DGAP's Report, total salable area in the Project has been wrongly claimed to be 12,19,140 Sq. Ft. while actual salable area as per the declaration made*

under the RERA is 12,39,814 Sq. Ft. as is evident from details attached herewith as Annexure-1 and the same as per declaration filed under UP Apartment Act is 12,79,980.50 Sq. Ft as is evident from copy of declaration annexed herewith as Annexure-2.

iii. Claim of Builder as to passing of GST benefit to all flat owners as per entitlement, as mentioned in Para 22 at page 11 of DGAP's report, is wrong as is evident from the following facts:

- (a). Applicant Rajeev Goyal and his cousin Vikas Agarwal booked simultaneously Flat No. C-1105 & 1106 respectively on same date and identical terms and conditions and for same consideration as is evident from copies of booking forms of the Applicant being annexed again as Annexure-3 and booking of Mr. Vikas Agarwal as Annexure-4.
- (b). All payments by the Applicant and Mr. Vikas Agarwal were made in same manner and during same time period as is evident from the copies of demands raised as on March 2016 and demand raised post GST to the Applicant being annexed again as Annexure-5 and that of Mr. Vikas Agarwal as Annexure-6.
- (c). Hence, GST benefit to be paid to the Applicant and Mr. Vikas Agarwal ought to be the same. However, Mr. Vikas Agarwal has been passed on GST benefit of Rs 11,600/-, while same to Rajeev Goyal was of Rs 16,419/-. Said amount of GST benefit passed on to the Applicant and Mr. Vikas Agarwal has been worked out on the basis of difference in amount payable at possession as per agreement and amount claimed in final demand letter at possession as annexed above as Annexure-4 & 5.
- (d). As per Para 21 to 23 & 25 of DGAP's report along with Annexure-17 to the said report, though DGAP has concluded that Applicant No 1 has been shortly paid Rs 41,481/- towards GST benefit, but there is no mention

about short payment of GST benefit to Vikas Agarwal.

- (e). *There are similar other instances. These are the home buyers, about whom it has been wrongly claimed in paragraph 22 to 23 of the DGAP's report that they have been paid the GST benefits in excess. In fact, they have been paid much less than to their entitlement. Details of some of such cases showing the amount of GST benefit paid and amount of short payment towards GST benefit along with supporting documents are annexed herewith as Annexure-7 Colly.*
- iv. *Further claim of the Builder as regard to credit note in support of payment of such GST benefit as per entitlement, as mentioned in Para 22 at Page 11 of the DGAP's report, is also wrong, false, fabricated and manipulated based on forged documents.*
- v. *In this regard, it is stated that no credit note was ever issued to the Applicant and Mr. Vikas Agarwal and others by the Builder as claimed in paragraph 22 of the DGAP's report, which clearly establishes that Builder has produced forged credit notes before the DGAP to substantiate its false and fabricated claim. However, certain documents in blank were got signed at the time of handover of the possession without supplying the copies thereof at the time of signing which is pending adjudication before the Hon'ble NCDRC, New Delhi.*
- vi. *To avoid detection of such fraud, Builder provided wrong email ids to the Authority and/or emails seeking verifications have been sent selectively, as none of flat owners, detailed in Annexure-6 Colly, received any verification email from DGAP. In this regard, email confirmation received from Prateek Edifice Apartments Owner Association is annexed as Annexure-8.*
- vii. *Claim of the Builder as to Rs 50.85 Cr turnover during April 2016 to June 2017 is wrong and false, as same was Rs 531.49 Cr as on 31.03.2016 and Rs 713.28 Cr as on 31.03.2017 as per audited balance sheet. Thus, turnover even during April 2016 to*

March 2017 was of Rs 181.49 crore. Against said amount collected, amount spent on the Project as on 31.03.2016 and 31.03.2017 were of Rs 281.61 (53%) and Rs 350.70 crore (49%). Copies of balance sheet for the F.Y 2013-18 are again annexed herewith as Annexure 9 Colly.

b. The applicant seeks for supplying of following documents:-

- i. Replies submitted by the Builder, as detailed in Para 9 of the DGAP's report and annexed as Annexure 5 to 14 to the said report.*
- ii. Documents as detailed in Para 10 of the DGAP's report.*
- iii. Annexure 17 as detailed in Para 21 of DGAP's report*
- iv. Annexure 18 & 19 as detailed in Para 22 of DGAP's report."*

4. On the basis of the submissions of the Applicant No. 1 made in his Affidavit dated 18.05.2022, a Notice dated 17.06.2022 was issued to the Respondent under Rule 130 of the CGST Act, 2017 to show cause as to why the above mentioned documents should not be supplied to the Applicant No. 1. The Respondent vide his email dated 23.06.2022, submitted that:-

- a. The impugned notice was time barred: On perusal of the provisions of Rule 130 of the CGST Rules, it was evident that while disclosing any information provided on a confidential basis, the provisions of Section 11 of the Right to Information Act, 2005 (hereinafter referred to as "RTI Act") should be applicable mutatis mutandis.

On careful perusal of the provisions of Section 11 of the Right to Information Act, 2005, it was evident that the public officer could not disclose the subject information unless the procedure prescribed in Section 11 of the RTI Act was completed. Accordingly, the concerned public officer was bound to issue a written

Notice to the third party within 5 days of receipt of the request for disclosure of any information or record or part thereof.

- b. The subject information included commercial confidence, trade secrets etc. and accordingly, the same could not be disclosed in terms of exemption provided under Section 8(d) & (j) of the RTI Act. The provisions of Section 8 of the Act *ibid* also provide that if there is a larger Public interest, the information would still have to be given in spite of availability of exemption. Now, in these circumstances, it was important to discuss whether the subject information/Annexures asked by the Applicant No.1 was confidential in nature and the disclosure of which would harm the competitive position of the Respondent and also whether there was a larger public interest w.r.t. the said information/Annexures.
- c. On careful perusal of the data/information in question, it was concluded that the data/information pertaining to Annexures- 5 & 6 (hereinafter referred to as 'Part-1') was not confidential in nature and the disclosure of such information would not harm the competitive position of the Respondent, accordingly, the same might be disclosed/shared. In this regard, it was pertinent to mention that the non-confidential information was already available on the Government portals and the same was accessible by the general public like MCA Portal.

However, the data/information pertaining to Annexures-7 to 14 & 17 to 19 (hereinafter referred to as 'Part-2') was absolutely confidential as well as personal in nature and there were high chances that the same might be misused by the competitors of the Respondent.

5. The Authority finds that the Applicant No. 1 has alleged fraud and forgery on the part of the Respondent and fault in calculations of the profiteered amount, saleable area and the total turnover of the Respondent by the DGAP for the Project "Prateek Edifice". The Applicant No. 1 vide the said Affidavit has stated that he and his cousin Sh. Vikas Agarwal had simultaneously booked Flat No. C-1105 & 1106 respectively on same date and on identical terms and conditions and for same consideration as Copies of booking forms of the Applicant No. 1 and Sh. Vikas Agarwal annexed with the said Affidavit. According to the Applicant No. 1, all payments by the Applicant No. 1 and Sh. Vikas Agarwal were made in the same manner and during the same time period and copies of demands raised as on March 2016 were submitted by the Applicant No. 1 with his Affidavit. Hence, as per the said Applicant, the GST benefit to be paid to the Applicant No. 1 and Sh. Vikas Agarwal ought to have been the same. However, as per the DGAP's Report Sh. Vikas Agarwal had been passed on GST benefit of Rs. 11,600/-, while the Applicant No. 1 was paid of Rs. 16,419/-. Said amount of GST benefit passed on to the Applicant No. 1 and Sh. Vikas Agarwal has been worked out on the basis of difference in amount payable at possession as per agreement. Therefore, in view of the above, the Applicant No. 1 requested for Annexures 5 to 14, 17, 18 & 19 to the DGAP's report stating that the Respondent has supplied wrong information during the investigation to the DGAP which has adversely affected the DGAP's calculations and the Applicants' claim of benefit of ITC.
6. The Authority has 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 Applicant No. 1 in his sworn affidavit made a statement that the Applicant No. 1 and his cousin Sh. Vikas Agarwal simultaneously booked Flat No. C-1105 & 1106 respectively on the same date and on identical terms and conditions and for the same consideration. To support his claim the Applicant No. 1 has submitted copies of booking forms of the Applicant No. 1 and Sh. Vikas Agarwal as annexed Annexure 3 with the said Affidavit along with copies of demand letters as annexed Annexure 5 with the same. Therefore, in view of the above, the Authority finds that the Respondent has submitted his set of data/information on the basis of which the DGAP has determined the profiteered amount in the present case, whereas the Applicant No. 1 vide his sworn affidavit has provided his set of documents/information. Therefore, the DGAP is directed to verify which of these documents are correct/authentic and determine the authentic records/documents/data and calculate the profiteered amount in respect of the Applicant No. 1 & 2 and other home buyers/recipients in the Project "Prateek Edifice" based upon such records/data/documents as found to be correct and authentic by the DGAP in accordance with law.
- b. The Applicant No. 1 vide the said Affidavit has also sworn and stated that in Table 'A' of Para 18 at Page 9 of the DGAP's Report, total saleable area in the Project has been wrongly claimed to be 12,19,140 Sq. Ft., while actual saleable area as per the declaration made under the RERA by the Respondent is 12,39,814 Sq. Ft. The Applicant No.1 has attached detailed calculation sheet as

Annexure-1 to his submissions. Further the Applicant No. 1 has stated that total saleable area in the Project as per declaration filed under the applicable Uttar Pradesh Apartment (Promotion of Construction, Ownership and Maintenance) Act, 2010 was 12,79,980.50 Sq. Ft and submitted a copy of declaration annexed therewith. As the claim/plea of the Applicant No. 1 is based upon the data of other statutory Authorities like RERA or the said UP Apartment (P, C & O) Act, 2010 etc. Therefore, the authenticity of the records/documents/data provided by the Respondent needs to be re-verified thoroughly in accordance with law. The saleable area of the Respondent considered for calculation of profiteered amount is to be based upon his RERA documents as is the practice followed by the DGAP. Therefore, the DGAP is directed to recalculate the saleable area based upon his RERA documents/registration of the Respondent.

7. Hence, this Authority finds that, the above narrated submissions of the Applicant No. 1 require due scrutiny and consideration. Therefore, without going into the merits and the other submissions made by the Respondent and the Applicant No. 1 & 2 at this stage, the Authority finds that this case needs to be reinvestigated by the DGAP based on the above observations of this Authority. Thus the Authority directs the DGAP to reinvestigate the matter as per the provisions of Rule 133(4) of the CGST Rules 2017.
8. The DGAP shall and must determine the authenticity and correctness of the data/information and records upon which its Report is based and after determining

the authenticity of such information/data & records reinvestigate and re-determine the profiteered amount, if any, for the Project and for each eligible recipient of supply in the said Project based upon such authentic and correct data, information and records.

9. The Hon'ble Supreme Court, vide its Order dated 23.03.2020 in Writ Petition (C) No. 3/2020 while taking suo-moto cognizance of the situation arising on account of Covid-19 pandemic, has extended the period of limitation prescribed under the general law of limitation or any other special laws (both Central and State) including those prescribed under Rule 133(1) of the CGST Rules, 2017, as is clear from the said Order which states as follows:-

"A period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended w.e.f. 15th March 2020 till further order/s to be passed by this Court in present proceedings."

Further, the Hon'ble Supreme Court, vide its subsequent Order dated 10.01.2022 has extended the period(s) of limitation till 28.02.2022 and the relevant portion of the said Order is as follows:-

"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 of special laws in respect of all judicial or quasi-judicial proceedings."

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



10. A copy of this order be supplied to the Applicant Nos. 1 & 2 and the Respondent. File of the case be consigned after completion.

S/d
(Amand Shah)
Technical Member &
Chairman



S/d
(Pramod Kumar Singh)
Technical Member

S/d
(Hitesh Shah)
Technical Member


(Dinesh Meena)
NAA, Secretary

File No. 22011/NAA/229/Prateek/2020 | 7835 - 7839 Date:-27.07.2022
Copy To:-

1. M/s Prateek Infra Projects Pvt. Ltd., G-50, Lower Ground Floor, Lajpat Nagar-III, New Delhi-110024.
2. Shri Rajeev Goyal, C-1105, Prateek Edifice, sector 107, Noida-201301.
3. Shri Ankush Goel, G 1115, Prateek Edifice, Sector-107, Noida.
4. Directorate General of Anti-Profiteering, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, New Delhi-110001.
5. Guard File.