



BEFORE THE COMPETITION COMMISSION OF INDIA
(AUTHORITY UNDER SECTION 171 OF THE CENTRAL GOODS & SERVICES TAX ACT, 2017)

I.O. No. : 14/2023
Date of Institution : 14.02.2023
Date of Order : 02.01.2024

In the matter of:

1. Sh. Rajeev Goyal, C1105, Prateek Edifice, Sector-107, Noida-201301.
2. Sh. Ankush Goel , G1115, Prateek Edifice, Sector-107, Noida-201301.
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. Smt. Ravneet Kaur, Chairperson
2. Sh. Anil Agrawal, Member
3. Ms. Sweta Kakkad, Member
4. Sh. Deepak Anurag, Member

Present: -

1. Sh. Rajeev Goyal, Applicant No. 1 in person,
2. Sh. Shivendu Pandey, Superintendent for the DGAP.
3. None for the Respondent.

ORDER

1. The present Report dated 14.02.2023 has been received from the Director General of Anti-Profiteering (hereinafter referred to as “**DGAP**”) after detailed re-investigation under Rule 129 (6) of the Central Goods & Service Tax (CGST) Rules, 2017 (hereinafter referred to as “**the Rules**”) pursuant to Interim Order No. 08/2022 dated 27.07.2022 passed by the erstwhile National Anti-Profiteering Authority (hereinafter referred to as “**NAA**”) under Rule 133(4) of the CGST Rules, 2017.
2. The brief facts of the present case are that the Applicant No. 1 & 2 had filed application before the Standing Committee on Anti-profiteering under Rule 128 of the CGST Rules, 2017, alleging profiteering by the Respondent in respect of purchase of Flat Nos. C-1105 and G-1115 respectively in the Respondent’s project “Prateek Edifice”, situated in Sector-107, Noida, Uttar Pradesh. The aforesaid reference was examined by the Standing Committee on Anti-profiteering, whereby it was decided to refer the matter to the DGAP, to conduct a detailed investigation. The said application was examined by the DGAP and the Investigation Report dated 27.11.2020 under Rule 129(6) of the Rules, was furnished to the NAA. Vide the said Report, it was submitted that on the basis of the CENVAT/Input Tax Credit availability pre and post-GST and the details of the amount collected by the Respondent from home buyers during the period 01.07.2017 to 31.12.2019, the amount of benefit of input tax credit that has not been passed on by the Respondent to the recipients or in other words, the profiteered amount

worked out to Rs.11,99,09,043/- (including GST) which was inclusive of profiteered amount of Rs. 1,75,220/- in respect of the Applicant No. 1 and profiteered amount of Rs. 59,437/- in respect of the Applicant No. 2. It was also mentioned that the Respondent had passed on ITC benefit of Rs. 14,28,58,414/- to 302 homebuyers as mentioned in Table - 'D' of the DGAP's report dated 27.11.2020 which had been verified from the documentary evidences submitted by the Respondent and confirmations received from the buyers. Further, the Respondent was yet to pass an additional amount of Rs. 7,70,819/- to the 19 home buyers including the Applicant Nos. 1 & 2 which included both the profiteered amount @7.37% of the base price and GST on the said profiteered amount. Thus, it was concluded that the Respondent had contravened the provisions of Section 171 of the Central Goods & Service Tax Act, 2017 (hereinafter referred to as "**the Act**").

3. In pursuance to the above Report of the DGAP, the NAA, after carefully considering the Report filed by the DGAP, the submissions of the Applicant No. 1 and the Respondent and other material placed on record had observed certain discrepancies in the DGAP's Report dated 27.11.2020 and vide Para 6(a) & 6(b) of the above I.O. No. 08/2022 dated 27.07.2022, the NAA referred the matter back to the DGAP and directed it to re-investigate the matter and to submit a comprehensive report on the following grounds: -

- a) *To re-verify the information provided by the Applicant No. 1 in his affidavit based upon a given set of documents vide which he has claimed that he and his cousin (Sh. Vikas Agarwal) simultaneously booked flats on same date and identical terms and conditions but the profiteering amount determined by DGAP was different.*
- b) *The actual saleable area as per the declaration made by the Respondent under RERA was 12,39,814 sq. ft. The same was needed to be examined by the DGAP and therefore, the DGAP was*

directed to recalculate the saleable area based upon the RERA documents/registration of the Respondent.

4. Accordingly, the DGAP has submitted his report on 14.02.2023 under Rule 133(4) of the CGST Rules, 2017, wherein, it has been stated that: -
- I. Reply to the observations made by NAA vide Para 6(a) of I.O. No. 08/2022 dated 27.07.2022
 - a. As directed by the NAA, to check the veracity of documents submitted by the Respondent during the earlier investigation, the DGAP asked the Respondent to submit the Builder buyer agreement as well as customer ledgers in respect of Applicant No. 1, Applicant No. 2 and Sh. Vikas Agarwal.
 - b. Vide letter dated 27.01.2023, the Respondent submitted copies of builder buyer agreements and customer ledgers for Applicant No. 1, Applicant No. 2 and Sh. Vikas Agarwal and stated that Applicant No. 1 and Sh. Vikas Agarwal had booked unit No. C – 1105 & 1106 on same date, but the *ad hoc* charges to be charged from them were separate. The Respondent also submitted that benefit of ITC given to each customer was computed individually depending on various factors such as cost of flat, installment due date, installment payment date, date of booking etc. and thus the benefit of ITC given to both Applicant No. 1 and Sh. Vikas Agarwal was not comparable.
 - c. On scrutiny of all the documents submitted by the Respondent in relation to the above mentioned issue, it was observed that the demand and advances received from both the Applicants &

Sh. Vikas Agarwal as reflected in the home buyers list submitted by the Respondent during the earlier investigation was different. Further, the submission of Respondent that benefit of ITC given to each customer was computed individually depending on various factors such as cost of flat, installment due date, installment payment date, date of booking etc. was considerable as it was noticed that the Respondent had passed on different amount of ITC benefit to different buyers based on the relevant factors. The details has been given in Table 'A' below:-

Table 'A'

1	2	3	4	5	6	7 = 5 + 6	8
S. No.	Customer Name and Unit no.	Demand raised and advances received during the pre-GST period <u>prior to 01.04.2016</u> (as per home buyer's list)	Demand raised and advances received for the period 01.07.2017 to 31.12.2019 (as per home buyer's list)	Amount of profiteering calculated @ 7.37% as per Report dated 27.11.2020	GST on the profiteered amount @ 12%	Total Profiteering amount calculated vide Report dated 27.11.2020	Benefit already passed on by the Respondent for the period 01.07.2017 to 31.12.2019
1.	Sh. Rajeev Goyal, C-1105 (Applicant No. 1)	Rs. 1,40,25,000/-	Rs. 7,01,442/-	Rs. 51,696/-	Rs. 6,204/-	Rs. 57,900/-	Rs. 16,419/-
2.	Sh. Vikas Agarwal, C-1106	Rs. 1,40,25,000/-	Rs. 9,68,946/-	Rs. 71,411/-	Rs. 8,569/-	Rs. 79,981/-	Rs. 83,527/-
3.	Sh. Ankush Goel G-1115 (Applicant No. 2)	Rs. 1,36,46,975/-	Rs. 21,22,742/-	Rs. 1,56,446/-	Rs. 18,774/-	Rs. 1,75,220/-	Rs. 56,169/-

d. From Table 'A' above, it is clear that the demand raised and advances received in respect of Applicant No. 1 and Sh. Vikas Agarwal during the period of investigation are not the same. Profiteering was calculated for a specific period of

investigation and the demand raised and advances received from the home buyers during that particular period only were taken up for calculation. Hence, despite the fact that Applicant No. 1 and Sh. Vikas Agarwal simultaneously booked Flat no. C-1105 and C-1106 respectively on the same date and on identical terms and conditions and for the same consideration, the profiteered amount in respect of Applicant No. 1 had been found to be different as the same depended solely on the amount of demand raised/advances received during the period of investigation. Similarly, in respect of Applicant No. 2, since the demand raised/advances received during the period of investigation were different from both the Applicant No. 1 & Sh. Vikas Agarwal, the profiteered amount was also different. Thus, on examination of documents submitted by the Respondent during the present investigation, it was observed that the documents submitted by the Respondent during the earlier investigation were in order and based on the same, the investigation report was submitted by the DGAP to the NAA on 27.11.2020. Accordingly, the profiteering computation was also correct in respect of all the buyers as mentioned in the report dated 27.11.2020.

II. Reply to the observations made by NAA vide Para 6(b) of I.O. No. 08/2022 dated 27.07.2022:-

a. The total saleable area reflected in the Report dated 27.11.2020 was based on the home buyers list furnished by

the Respondent during the course of investigation. On the objection raised by Applicant No. 1 and as per the directions of the NAA that the DGAP was directed to recalculate the saleable area based upon his RERA documents/registration, the Respondent was requested to submit reconciliation of the area in home buyers list *vis-a-vis* the area reflected in RERA registration. In response, the Respondent furnished a reconciliation statement as per Uttar Pradesh RERA registration of project "Prateek Edifice" and a copy of project report summary of RERA. In order to cross verify the project report summary of RERA, the relevant papers were also downloaded from the website of UP RERA. Both the summaries were found to be the same. Further it was noticed that in the RERA summary only the unit carpet area and balcony area and their sum was reflected, whereas in order to work out total saleable area on each floor, the sum so found was required to be multiplied with the number of apartment on each floor to work out the total saleable area. Accordingly, the exercise was done and total area on each floor was worked out on the strength of figures reflected in RERA project summary. It was observed that the total saleable area was to the tune of 10,16,795 sq. ft. On the other hand, the home buyer list furnished by the Respondent reflected the total saleable area as 12,19,140 sq. ft. The Respondent in his reconciliation statement had stated that apart from the carpet area and balcony area, super area had some

loading, and after adding up the loading to the saleable area as per RERA summary, the total super area (with loading) comes out to 12,19,138 sq. ft. In support of his submission, the Respondent had also furnished copies of relevant pages of sale deeds of Unit No. C – 1105 and C – 1106 (which pertain to Applicant No. 1 and Sh. Vikas Agarwal). In the said pages of sale deed, it had been clearly mentioned that for built up area of 192.68 sq. mtr., the super area was 232.26 sq. mtr., which explained the element of loading as stated by the Respondent. The total saleable area reflected in the Report dated 27.11.2020 was 12,19,140 sq. ft., which was as per home buyers list furnished by the Respondent. The minor difference of 02 sq. ft. between the figure of saleable area in home buyer's list and the reconciliatory statement might be on account of rounding off of figures. The figure of 12,39,814 sq. ft. mentioned by the Applicant No. 1 had not been found in the RERA summary.

- b. That in the RERA documents, the super area was not mentioned, whereas in practice any unit of Construction Service was sold on the basis of super area, and in the sale deed, super area was clearly mentioned. Even the payments were made by the home buyers on the super area of the unit, and not the carpet area. Since, the payments were made for the super area, profiteering was worked out on the demand raised and advances received in

respect of the super area. It could not be restricted to the carpet area. Therefore, it was observed that it would not be proper to recalculate the saleable area based upon RERA documents, as directed by the NAA. This had been the uniform practice followed by the DGAP in all cases of investigation in respect of real estate.

- c. That the total saleable area of 12,19,138 sq. ft. was correctly taken in the Report dated 27.11.2020 as per home buyers list furnished by the Respondent. The same was corroborated by the fact that as per RERA summary the total saleable area (carpet area + balcony area - loading) was 10,16,795 sq. ft., which was less than the super area reflected in the home buyers list. This also explained that the Respondent had loaded an area of 2,02,343 (12,19,138-10,16,795) sq. ft.
- d. Thus, with reference to the above issue raised by the Applicant No. 1 before NAA, on scrutiny of documents, it was observed that total saleable area i.e. 12,19,138 sq. ft. considered for computation of profiteering in the report dated 27.11.2020 was correct and in order.

- III. That the earlier report dated 27.11.2020 submitted by the DGAP establishing and determining profiteering to the tune of Rs. 11,99,09,043/ (including GST) be considered as findings of this investigation.

IV. That the provisions of Section 171(1) of the Act, 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”, had been contravened by the Respondent in the present case.

5. The above report of the DGAP dated 14.02.2023 was considered by the erstwhile NAA and it was decided to allow the Respondent and the Applicant No. 1 & 2 to file their consolidated written submissions in respect of the above Report of the DGAP. Notice dated 05.07.2023 was also issued to the Respondent directing him to explain why the above Report furnished by the DGAP should not be accepted and his liability for violation of the provisions of Section 171 of the Act should not be fixed.

6. The Respondent vide his written submissions dated 24.07.2023 on the DGAP’s report dated 14.02.2023, has made following submissions: -

I. That before the issuance of DGAP Report dated 14.02.2023, an initial report dated 27.11.2020, was issued by DGAP itself through email, wherein anti-profiteering amount was calculated upon the Respondent in the following manner:-

Table ‘B’

Particulars	Amount	Reference
Total amount anti-profiteered by the Respondent	11,99,09,043	Total of Column F of Table-D in DGAP Report dated 27.11.2020
Benefit already passed on by the Respondent	14,28,58,414	Total of Column G of Table-D in DGAP Report dated 27.11.2020
Balance amount of benefit yet to be passed on by the Respondent	7,70,819	Column H-1, H-2 & H-4 of Table-D in DGAP Report dated 27.11.2020

- II. That subsequently in response to I.O. No. 08/2022, dated 27.07.2022 issued by NAA, the DGAP was directed to re-investigate the matter and submit his report accordingly. Consequently, DGAP has reissued his Report dated 14.02.2023, in reference to DGAP's initial report dated 27.11.2020, wherein the very same amount of anti-profiteering has been determined.
 - III. The Respondent did not principally admit the amount of anti-profiteering determined in either of the reports issued by DGAP as the method adopted by DGAP to arrive at the said amount of anti-profiteering was not correct, but, in order to avoid any further litigation, the Respondent was ready to pay the balance amount of anti-profiteering amounting of Rs. 7,70,819/- as per method that might be prescribed by the concerned authority.
7. The Applicant No. 1 vide his written submissions dated 24.07.2023 on the DGAP's report dated 14.02.2023, has made the following submissions: -
- I. The DGAP has not re-investigated the matter fully, properly, fairly and reasonably and has not considered all the material relevant to issues raised by Applicant No. 1 in his affidavit dated 18.05.2022.
 - II. Vide para 8 of I.O. No. 08/2022 dated 27.07.2022, the NAA directed DGAP to calculate profiteered amount in respect of not only Applicant No. 1, but also other home buyers. Apart from Applicant No. 1, some of such homebuyers, having not been paid full profiteered GST benefit include Sh. Rajender Shankar and Sh. Afzal Ahmed Khan.

- III. No such credit notes were ever issued to the Applicant No. 1, his cousin Sh. Vikas Agarwal and other home buyers i.e. Sh. Rajender Shankar and Sh. Afzal Ahmed Khan as mentioned by the Applicant No. 1 in Annexure – C to the above submissions and were claimed to be forged and fabricated.
- IV. In the DGAP's report dated 27.11.2020 verification of receipt of benefit of ITC was done by sending emails to the homebuyers at the email addresses provided by the Respondent. since the email ids provided by the Respondent were wrong hence no such verification email was ever received by Applicant No. 1 and other home buyers as mentioned in para 6(III) above.
- V. DGAP's report dated 14.02.2023 was completely silent about manipulated and false claim of the Respondent as to the turnover of Rs. 50,85,24,517/- during pre GST period of April 2016 to June 2017. Falsity of the said claim of the Respondent is evident from audited balance sheet of the Respondent for FY 2013-18.
- VI. The final demand as raised against the Applicant No. 1 was of Rs. 11,59,690/- and against Sh. Vikas Agarwal was of Rs. 11,64,714/-, which were paid by the Applicant No. 1 and Sh. Vikas Agarwal on 29.01.2019 and 16.01.2019 respectively. Thereafter, the Respondent recovered further Rs. 2,99,605/- from Sh. Vikas Agarwal towards purported delayed possession penalty on 30.03.2019 in violation of the interim order of the National Consumer Disputes Redressal Commission (NCDRC).

- VII. The Applicant No. 1 vide his affidavit dated 18.05.2022 had established that the Respondent had submitted wrong and manipulated figure of saleable area of 12,19,140 sq. ft. in the project. In fact, same was 12,39,814 sq. ft. as per the calculations made on the basis of declaration filed by the Respondent under RERA at the time of registration of the project. In fact, same was 12,79,980.50 sq. ft. as per the declaration filed by the Respondent under the UP-Apartment Act upon completion of the project.
- VIII. The Applicant No. 1 requested for forensic audit qua the accounts of the Respondent.
- IX. Applicant No. 1 submitted that the claim of the Respondent as to the confidentiality of all the documents and information furnished be rejected and same be ordered to be provided to the Applicant No. 1.
8. A supplementary report was sought from the DGAP on the above submissions of the Applicant No. 1 under Rule 133(2A) of the CGST Rules, 2017. The DGAP filed his clarifications vide letter dated 12.09.2023, wherein, it was stated that: -
- I. The Applicant No. 1's allegation that DGAP has not re-investigated the matter fully, properly, fairly and reasonably was not justified. On the contrary, the points raised by the Applicant No. 1 had been properly addressed in the Report dated 14.02.2023. Even the NAA vide Para 6(a) & 6(b) of I.O. No. 08/2022 dated 27.07.2022 had directed DGAP to re-investigate the case on specific grounds. From these directions, it was very clear that NAA had directed DGAP to re-investigate the matter on two specific points: - (1) To check the authenticity of the documents submitted by the Respondent and (2) check correct saleable area as

per RERA records. Both the above points had been re-investigated properly and thoroughly by the DGAP and findings were recorded in the Report dated 14.02.2023.

- II. The Applicant No. 1 had got benefit of ITC of Rs. 16,419/- as against the profiteered amount of Rs. 57,900/-, which was already less than what was required to be passed on to him. In case of Sh. Afzal Ahmed Khan and Sh. Rajender Shankar, they had received Rs. 2,06,416/- and Rs. 16,36,867/- respectively as benefit of ITC as against profiteered amount of Rs. 2,00,885/- and Rs. 15,74,230/- respectively.
- III. The DGAP had verified the credit notes issued to Sh. Vikas Agarwal with other documents such as ledgers and found that credit Note No. 00128/18-19 dated 10.11.2022 for Rs. 18,385/- and credit Note No. 00085/18-19 dated 10.11.2022 for Rs. 65,142/- (total Rs. 83,527/-) had been passed on. The same had been duly entered in the customer's ledger.
- IV. The DGAP had obtained email ids/phone numbers from the home buyers list, which had to be provided by the Respondent. In the present case also as per practice, emails had been sent to home buyers and outcome of the same was mentioned in the Report dated 27.11.2020.
- V. The turnover of the project had been taken from home buyers list. The consolidated balance sheet pertains to multiple projects and turnover of one project can only be segregated from the consolidated balance sheet when all the transactions of this particular project appearing as per home buyers list were taken into consideration.

VI. Issue of delay payment did not pertain to DGAP. However, despite the same payments done by Applicant No. 1 and Sh. Vikas Agarwal there was a significant difference between demands raised to both of them. There was a difference of Rs. 2,99,605/- between demands raised to both of them which is the interest charged on the delayed payment to Sh. Vikas Agarwal. Further, whether the demands were liable to be raised or not was not an issue that could be dealt with under the provisions of Section 171 of the Act.

VII. The Respondent furnished a reconciliation statement as per UP RERA registration of project "Prateek Edifice" and a copy of project report summary of RERA. In order to cross verify the project report summary of RERA, the relevant papers were also downloaded from the website of UP RERA (website). Both the summaries were found to be the same. It was observed that the total saleable area was to the tune of 10,16,795 sq. ft. On the other hand, the home buyers list furnished by the Respondent reflected the total saleable area as 12,19,140 sq. ft. The Respondent in his reconciliation statement had stated that apart from the carpet area and balcony area, super area had some loading, and after adding up the loading to the saleable area as per RERA summary, the total super area (with loading) comes out to 12,19,138 sq. ft. In support of his submission, the Respondent had also furnished copies of relevant pages of sale deeds of Unit No. C - 1105 and C - 1106 (which pertain to Sh. Rajeev Goyal and Sh. Vikas Agarwal). In the said pages of sale deed, it had been clearly mentioned that for built up area of 192.68 sq. mtr., the super area was 232.26 sq. mtr., which explained the element of loading as stated by the Respondent.

The total saleable area reflected in the Report dated 27.11.2020 was 12,19,140 sq. ft., which was as per home buyers list furnished by the Respondent. The minor difference of 02 sq. ft. between the figure of saleable area in home buyer list and the reconciliatory statement might be on account of rounding off of figures. The figure of 12,39,814 sq. ft. mentioned by the Applicant No. 1 had not been found in the RERA summary.

Further, the calculations submitted by the Applicant No. 1 for 12,39,814 sq. ft. and declaration submitted to New Okhla Industrial Development Authority (NOIDA) for 12,79,980.50 sq. ft. by the Respondent had been considered and as per the practice followed by the DGAP for consideration of area of a project, the project Report submitted to RERA had been taken as authentic fact. Further the figure of 12,79,980.50 sq. ft. in the declaration submitted by the Respondent to NOIDA under Section 12(1) of the Uttar Pradesh Apartment (Promotion of Construction, Ownership and Maintenance) Act, 2010 & Rule 3 of the Uttar Pradesh Apartment (Promotion of Construction, Ownership and Maintenance) Rules, 2011 could not be treated as the final figure as there was a provision to amend the said declaration in terms of Section 12(2) of the Uttar Pradesh Apartment (Promotion of Construction, Ownership and Maintenance) Act, 2010. Accordingly, the figures provided by the Applicant No. 1 were not justifiable in the instant case as DGAP had taken the saleable area correctly as per RERA and home buyers list as a standard practice.

VIII. The DGAP had done investigation on the basis of documents listed in DGAP's Notice dated 31.01.2020 and letter dated 29.08.2022, most of

the documents/records being of statutory nature. The records were duly reconciled with the other records submitted by the Respondent. The facts and findings were mentioned in the DGAP's Reports dated 27.11.2020 and 14.02.2023. No evidence was provided by the Applicant No. 1 which proved that DGAP had considered forged/manipulated documents. Moreover, pre-GST turnover had only to be taken for April, 2016 to June, 2017 and not as per request of Applicant No. 1 i.e. from 2012. There was not enough evidence that the documents had been manipulated or forged. Therefore, undertaking a forensic audit was not feasible.

9. The Applicant had filed his rejoinder dated 02.10.2023 on the above DGAP's clarifications vide which he had reiterated his submissions dated 24.07.2023.
10. The Respondent vide his letter dated 28.11.2023 also reiterated his submissions dated 24.07.2023 and stated he did not have anything more to add and wanted to comply with the demand mentioned in the DGAP's report dated 27.11.2020.
11. Hearing in the matter was held by the Commission on 30.11.2023. It was attended by Sh. Rajeev Goyal, Applicant No. 1 in person, Sh. Shivendu Pandey, Superintendent for the DGAP and none appeared on behalf of the Respondent. During the course of hearing, Applicant No. 1 advanced arguments in the matter and reiterated his earlier submissions. Superintendent, Sh. Shivendu Pandey from DGAP responded to the arguments of the Applicant No. 1.
12. The Applicant No. 1 during the hearing claimed that his following objections had not been addressed in DGAP's report dated 14.02.2023:-

- a) That the DGAP's report was silent on the issue related to saleable area as per the UP Apartment (Promotion of Construction, Ownership and Maintenance) Act, 2010 under which it has been declared by the Respondent as 12,79,980.50 sq. ft. However, the same as per the Respondent's declaration under RERA was 12,39,814 sq. ft. at the time of registration of the project and as per the homebuyers list, it was 12,19,140 sq. ft. as was mentioned in the DGAP's report.
- b) Another contention raised by the Applicant No. 1 on the DGAP's report dated 14.02.2023 is that vide Para 8 of I.O. No. 08/2022 dated 27.07.2022, the NAA directed DGAP to calculate profiteered amount in respect of not only Applicant No. 1, but also other home buyers. Apart from Applicant No. 1, some of such homebuyers, having not been paid full GST benefit included Sh. Vikas Agarwal, Sh. Rajender Shankar and Sh. Afzal Ahmed Khan as mentioned by the Applicant No. 1 vide Annexure -C to his submissions dated 24.07.2023. Applicant No. 1 further, added that there is no mention and discussion about compliance of Para 8 of I.O. No. 08/2022 in DGAP's report dated 14.02.2023. Only Para 6(a) & 6(b) has been addressed in the DGAP's report dated 14.02.2023.
- c) The Applicant No. 1 further contended that DGAP's report dated 14.02.2023 is completely silent about the manipulated and false claim of the Respondent as to the turnover of Rs. 50,85,24,517/- during pre-GST period of April 2016 to June 2017 and falsity of the said claim of the Respondent to said turnover is evident from the audited balance sheet of the Respondent for FY 2013-18.

- d) The Applicant No. 1 also requested for forensic audit qua the accounts of the Respondent to ascertain correct figure of total turnover of the project during the pre-GST period since 2012 till June 2017 and post-GST period since 01.07.2017 till December 2019, total super area, built up and sold area in the project by the Respondent, and amount paid to the home buyer towards profiteered GST amount so far.
- e) The Applicant No. 1 further contended that DGAP's report dated 14.02.2023 is totally silent about re-verification of GST benefit allegedly paid by the Respondent to the homebuyers which was purportedly done by sending emails on wrong email ids as provided by the Respondent to the DGAP.

In this regard, the Commission finds that the DGAP vide its report dated 27.11.2020 has randomly selected 100 homebuyers out of list of 303 homebuyers and e-mails were sent to these 100 buyers. Out of these 100 buyers, only 34 buyers had confirmed the receipt of ITC benefit given by the Respondent and 2 home buyers had denied receiving of any benefit from the Respondent and no reply was received from the remaining home buyers. Therefore, the DGAP is directed to send emails and seek reply from each buyer out of the 303 homebuyers (as mentioned in Annexure-17) of DGAP's report dated 27.11.2020 and confirm as to how many of them have received benefit of ITC from the Respondent.

13. Accordingly, the Commission under Rule 133(4) of the CGST Rules, 2017 directs the DGAP to investigate the matter on the issues mentioned in Para 12(a) to 12(e) above.

14. The Respondent & Applicant No. 1 are also directed to extend all necessary

assistance to the DGAP and furnish him with necessary documents or information as required during the course of the investigation.

15. A copy of this order be supplied to all the parties free of cost and file of the case be consigned after completion.


S/d
(Deepak Anurag)
Member

S/d
(Sweta Kakkad)
Member

S/d
(Anil Agrawal)
Member

S/d
(Ravneet Kaur)
Chairperson

Certified Copy


Anupama Anand
(Secretary, CCI)

File No. 22011/NAA/229/Prateek/2020/Pt. II

Date:- 03.01.2024

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, C1105, Prateek Edifice, Sector-107, Noida-201301.
3. Shri Ankush Goel, G 1115, Prateek Edifice, Sector-107, Noida-201301.
4. Directorate General of Anti-Profiteering, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, New Delhi-110001.
5. Guard File.