

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

Case No. 24/2022  
Date of Institution 31.03.2021  
Date of Order 22.06.2022

**In the matter of:**

1. Sh. Ritesh Kumar Khandelwal, Flat No.606, Tower-D Express Zenith Society, Sector-77, Noida, Uttar Pradesh-201301.
2. Sh. Abhinav Raina S/o Bansi Lal Raina, A-2/218, IInd Floor, Gali No.10, Phase-5, Aya Nagar Extn, New Delhi-110047.
3. Sh. Anil Bhat S/o C.L. Bhat, D-4, Flat No. 488 Penta Houses VIP Road, Zirakpur, Punjab-140603.
4. Sh. Rajesh S/o Munna Lal, House No. 107, Naharpur, Sector-7, Rohini, Delhi-110085.
5. Director General Anti-Profitteering, Central Board of Indirect Taxes & Customs, 2<sup>nd</sup> Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gale Market, New Delhi-110001.

Applicants

**Versus**

**M/s Forever Buildtech Pvt. Ltd.**, Signature Global, 101, GF, Tower A, Signature Towers, South City-1, Sector-29, Gurugram, Haryana.

Respondent

**Quorum:-**

- Sh. Amand Shah Chairman & Technical Member  
Sh. Pramod Kumar Singh, Technical Member  
Sh. Hitesh Shah Technical Member

**Present:-**

1. Applicant No. 1, 2 and 3 in person.
2. None for the Respondent.



**ORDER**

1. The Present Report dated 31.03.2021 had been received from the Director General of Anti-Profitteering (DGAP) after investigation under Rule 129 (6) of the Central Goods & Service Tax (CGST) Rules, 2017.

2. The DGAP vide the above said Report dated 31.03.2021 has inter-alia stated the following:-`

- i. The Standing Committee on Anti-profiteering, received 4 Applications under Rule 128 of the Central Goods and Services Tax Rules, 2017, filed by Applicant No. 1, 2, 3 and 4 alleging profiteering in respect of construction service supplied by the Respondent. The above Applicants alleged that the Respondent had not passed on the benefit of input tax credit to them by way of commensurate reduction in the price in the project "The Roselia Sector-95A" situated at Gurugram, Haryana in terms of Section 171 of the Central Goods and Services Tax Act, 2017.
- ii. The aforesaid applications were examined by the Standing Committee on Anti-profiteering, in its meeting whereby it was decided to forward the same to DGAP to conduct a detailed investigation in the matter.
- iii. On receipt of the reference from the Standing Committee on Anti-profiteering, a Notice under Rule 129 of the Rules was issued by the DGAP on 17.12.2020, calling upon the Respondent to reply as to whether he admitted that the benefit of input tax credit had not been passed on to the above Applicants by way of commensurate reduction in prices and if so, to suo-moto determine the quantum thereof and indicate the same in his reply to the Notice as well as furnish all supporting documents. Vide the said Notice, the Respondent was also given an opportunity to inspect the non-confidential evidences/information furnished by the Applicants during the period 28.12.2020 to 30.12.2020. However, the Respondent did not avail of this opportunity.
- iv. The period covered by the current investigation was from 01.07.2017 to 30.11.2020. The time limit to complete the investigation was 23.05.2021.
- v. In response to the Notice dated 17.12.2020, the Respondent submitted his reply vide letters/e-mails dated 22.01.2021, 19.02.2021, 05.03.2021 and 25.03.2021. The Respondent placed the following facts to establish that he was not covered under the provision of Section 171 of CGST Act, 2017 and the submissions of the Respondent were as follows:
  - (a) The provisions of section 171(1) which had been placed in Chapter XXI of the Central Goods and Service Tax Act pertaining to "Miscellaneous" provisions state the following: -  
"Any reduction in rate of tax on any supply of goods or services



or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices."

On the reading of above provisions of the section, it was clear that the provision of Section 171 of CGST Act, shall apply only in two cases:

- I. Reduction in rate of tax, and
  - II. The benefit of ITC by way of commensurate reduction in price was to be passed on to the recipient.
- (b) The agreement between the Respondent and the buyers of residential project was executed on 20.07.2017, vide which the terms & condition for the allotment, consideration including taxes & other conditions had been mentioned.
- (c) All the events i.e. allotment of the Flats on 05.07.2017, agreement between the Respondent & the Buyer duly executed on 20.07.2017 & construction activities started on 15.11.2017, occurred after introduction of GST. The transaction between the Builder & the Buyer was covered by clause (b) of paragraph 5 of Schedule II of the CGST Act from the date the buyer was allotted the flat i.e. 05.07.2017 or the date of signing of Builder-Buyer Agreement whichever was earlier.
- (d) The Respondent had submitted the following preliminary objection, and requested to dispose-off the same by passing speaking order, before proceeding with the investigation.

"Whether the Anti-profiteering proceeding can be initiated on the project where Allotment/Builder Buyers Agreement & the construction activities were made/ executed in GST period?"

*Without prejudice to preliminary objection, in case the DGAP, still decided to proceed with the investigation, it was requested to dispose off the above mentioned objection by passing speaking order in view of well settle law in case of M/s GKN Driveshafts (India) Ltd. (2002) 1SCC 72. Relevant para of the judgment was reproduced below:*

*"However, we clarify that when a notice under Section 148 of the Income Tax Act was issued, the proper course of action for the noticee was to file return and if he so desires, to seek reasons for issuing notice. The assessing officer was bound to furnish reasons within a reasonable time. On receipt of reasons, the noticee was entitled to file objections to issuance of notice and the assessing officer was bound to dispose of the same by passing a speaking order. In the instant case, as*

*the reasons had been disclosed in these proceedings, the assessing officer had to dispose of the objections, if filed, by passing a speaking order, before proceeding with the assessment in respect of the above said five assessment years”*

- (e) The Respondent was engaged in the real estate business activities including development and sale of residential/commercial properties. The Respondent launched its Second Affordable Housing Project namely "**The Roselia Sector-95A**" & allotment of the flats was made on 05.07.2017 under the "Haryana Affordable Housing Policy 2013'
- (f) The Builder Buyer Agreement (BBA) of residential project was executed on 20.07.2017. Similarly, BBA in respect of Commercial Units sold was first executed on 19.06.2018 i.e. during post GST period.
- (g) The "Respondent offered the rates for selling flats on allotment, after due consideration of GST paid/payable on goods & services involved in the execution of the Contract as well as eligible GST credit, which can be set-off against output tax liability.
- (h) Consideration for the sale of Flat was duly agreed between Respondent and buyer @ 4,000/- per square feet on carpet area basis, besides balcony area @ 500/- per square feet. Further, GST as applicable too was payable extra. The Builder-Buyer agreement containing all the terms & conditions of allotment was duly executed on 20.07.2017 onwards between the Respondent & the successful applicant.
- (i) The construction activities on the aforesaid project were started on 15.11.2017 and thereafter, during GST regime.
- (j) Vide the aforementioned letters, the Respondent submitted the following documents/information:
- Copies of GSTR-1 returns for the period July, 2017 to November, 2020.
  - Copies of GSTR-3B returns for the period July, 2017 to November, 2020.
  - GSTR-9 & 9C for the FY 2017-2018.
  - Copy of Tran-I, Electronic Credit Ledger for the period July, 2017 to November, 2020.
  - Copies of VAT returns and Service Tax returns for the period April, 2016 to June, 2017.



- Copies of all demand raised to the Applicant.
- Details of Applicable tax rates, Pre-GST and Post-GST.
- Copy of Balance Sheet for the year 2017-18 to 2019-20.
- Copy of RERA registration.
- Copy of Registry between the land owner and the Respondent.
- List of Home buyers for the project. Details of Sold and Unsold units for the project.

(k) The Respondent vide letter dated 22.01.2021 declared all the documents except Balance Sheet as confidential under Rule 130 of CGST Rules, 2017.

- vi. Vide e-mail dated 09.03.2021, all the Applicants were afforded an opportunity to inspect the non-confidential reply furnished by the Respondent on 15.03.2021 or 16.03.2021. The Applicant No. 1 availed of the opportunity on 15.03.2021 and after inspection submitted a letter dated 15.03.2021 wherein he stated that only balance sheets were shared with him and remaining documents had not been shown to him.
- vii. 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). However, affordable housing had been exempted from the purview of Service Tax vide Notification No. 09/2016-ST dated 01.03.2016. After implementation of GST w.e.f. 01.07.2017, GST on construction service 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 meters 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).
- viii. On scrutiny of the documents submitted by the Respondent, it was observed that all the Applicants had been allotted Units alter the introduction of GST. The Respondent had charged GST @18%(effectively 12%) for the period 01.07.2017 to 25.01.2018 and thereafter at the reduced rate of GST @12% (effectively 8%) from his buyers in terms of Notification No. 01/2018-Central Tax (Rate) dated 25.01.2019. It had been duly verified from the tax invoices raised by the Respondent.

*ML*




- ix. From the verification of documents submitted by the Respondent and his submissions, it was observed by the DGAP that there was no sale or allotment of the flats in the said project in the pre-GST regime. Further, the first allotment made by the Respondent in this project was 05.07.2017 i.e. in post-GST period. On scrutiny of the documents submitted by the Respondent i.e. first tax invoice for demand cum allotment letter, Builder Buyers Agreement, Demand letter of the Applicants, date of first booking of flat and other documents, it was also observed that the project "The Roselia Sector-95A" indeed began in the post-GST era and the above Applicants also did not produce any evidence to prove otherwise. There was no unit sold in the pre-GST era which can be compared with the post-GST base price to determine whether there was any profiteering. All the events i.e. allotment of the flats, agreement between the Respondent and the buyers and construction activities started after the introduction of GST i.e. 01.07.2017.
- x. The date of issue of first tax invoice for demand cum allotment letter was 05.07.2017. The allotment of units, Builder Buyer Agreement, start of construction activities etc. had taken place in post-GST. From the perusal of the Home buyers list submitted by the Respondent it was observed that date of first booking of flats was 05.07.2017. Neither the above Applicants nor the Respondent had given any document to prove that any booking for the project was done in pre-GST period. In this connection, the Respondent had submitted Service Tax returns for the period October, 2016 to September, 2017. On scrutiny of his return, it was observed that turnover/Gross taxable amount of construction service was NIL during this period. Thus, there was no turnover against construction service in Service Tax return and it corroborates the statement of the Respondent that the said project was started in post-GST era. Hence, the base price in pre-GST era cannot be computed to compare price charged in post-GST. It was also observed that the price charged for the said residential flats was for a new project developed and constructed by the Respondent after implementation of GST. Hence, it appeared that the anti-profiteering provisions were not applicable to the impugned project under investigation.
- xi. Section 171 of the Central Goods and Services Tax Act, 2017 comes into play in the event when 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 all the events i.e. allotment of units, agreement, booking and construction activities took place in post-GST era. Since the project



itself was started after implementation of GST w.e.f. 01.07.2017, there was no pre-GST turnover or input tax credit availability that can be compared with the post-GST turnover and input tax credit, to determine whether there was any benefit that was required to be passed on by way of commensurate reduction in price. 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 Haryana only.

3. The above Report was considered by the Authority in its sitting held on 25.02.2022 and it was decided to accord opportunity to make submissions to the above Applicants by 15.03.2022 to explain why the Report dated 31.03.2021 submitted by the DGAP should not be accepted. Further opportunities were also given on 11.04.2022 and 27.04.2022. The Hearing through Video Conferencing in the matter was held on 06.05.2022.
4. The submissions made by the Applicant No. 1 dated 14.03.2022, by the Applicant No. 2 dated 02.04.2022 and by the Applicant No. 3 dated 05.04.2022 were same and are reproduced herein below:
  - a) On recommendations of 33<sup>rd</sup> GST Council meeting held on 24th February 2019, the GST rates on the supply in question were reduced to 1% without ITC from the earlier rate of 8%. The effective date of the new rates was from 1<sup>st</sup> April 2019.
  - b) It had been clearly stated in answer to FAQ (F.No. 354/32/2019-TRU) question No. 1 that, in case of an ongoing project, the promoter had an option to pay GST at old rates i.e. 8 %, and the benefit of the credit availed by him was to be passed on to the buyers. The relevant portion of the FAQ was as under:

*"However, in case of an on-going project, the promoter had an option to pay GST at old rates, i.e. at the effective rate of 8% on affordable residential apartments and effective rate of 12 % on other than affordable residential apartments and, consequently, to avail permissible credit of input taxes: in such case the promoter was also expected to pass the benefit of the credit availed by him to the buyers."*

Further, it was clear from the FAQ that the present project falls in the category of ongoing affordable project and hence the old rates were opted by the Promoter.
  - c) As per the condition mentioned by the Council, GST input credit was to be passed on to the buyers, in case of an ongoing project where old rates of



GST were opted. In the current case, the promoters had not passed any benefit on the credit availed by them.

- d) As in the current case, GST rates were reduced with effect from 1st April 2019, the same can be taken as the basis of comparison for profiteering by not passing the benefit of input to the buyers.
  - e) They also reproduced the definitions of Affordable residential apartment and On-going project. They also requested to seek information from Respondent in regards to the benefits of ITC passed on to him.
5. The DGAP vide letter dated 11.04.2022 clarified in this regard, that the project "The Roselia Sector- 95A" started in post-GST period and Section 171 of the CGST Act, 2017 comes into play in the event when there was a reduction in the rate of tax or there was an increase in the benefit of input tax credit. In this case, all the events i.e. booking, allotment of units, agreement, and construction activities took place in post-GST period, therefore, there was no pre-GST turnover or input tax credit available that can be compared with the post-GST turnover and input tax credit, to determine whether there was any benefit that was required to be passed on by way of commensurate reduction in price. Therefore, claim of the above Applicants was not sustainable.
  6. Further as per direction in Video Conferencing dated 06.05.2022, the Applicant Nos. 1, 2 and 3 vide their e-mail dated 09.05.2022 had submitted Allotment letter, Demand pre-intimation letter from the builder.
  7. The proceedings in the matter could not be completed earlier by the Authority due to lack of required quorum of members in the Authority during the period 29.04.2021 till 23.02.2022, and that the minimum quorum was restored only w.e.f. 23.02.2022 and hence the matter was taken up for proceedings vide Order dated 25.02.2022.
  8. We have carefully considered the DGAP's Report and all other submissions which have been placed on record and find that the following issues are required to be settled in the present proceedings:-
    - I. Whether there are benefit of additional ITC available to the Respondent which are not passed on by him to the Applicants?
    - II. Whether there is any violation of the provisions of Section 171 (1) of the CGST Act, 2017 by the Respondent?
  9. Perusal of the record reveals that the complaint of profiteering is in respect of purchase of flats in the Respondent's project "The Roselia Sector-95A", Gurugram, Haryana. The project is an affordable Housing project as per the policy notified by Town & Country Planning Department, Government of Haryana vide Notification dated 19.08.2013. The Applicant No. 1 has been allotted flat No. 1202 in Tower A, the Applicant No. 2 has been allotted flat no. 206 in Tower B, the Applicant No. 3 has been allotted flat No. 605 in Tower I and the Applicant



No. 4 has been allotted flat no. 304 in Tower A of the project. In the instant case the draw of lots for allotment of houses was conducted on 05.07.2017 in the presence of the committee constituted under the Affordable Housing Policy, 2013. The Authority finds that an agreement was executed between the Applicant No. 1 & the Respondent on 06.02.2019 in the post GST period. Agreements with other Applicants were also executed in the post GST period. The construction activities were started on 15.11.2017. The chronology of above events shows that the service rendered by the Respondent by way of construction and development of the project was not in existence during the pre-GST regime.

10. The Applicant No. 1, 2 and 3 had been vehemently claiming that they had been denied the benefit of ITC and the Respondent had resorted to profiteering in violation of the provisions of Section 171 (1) of the above Act. They also quoted the rate reduction of 1% without ITC on affordable residential projects w.e.f. 01.04.2019 in terms of 33<sup>rd</sup> GST Council meeting, the definition of on-going projects and also referred to FAQs issued by Ministry of Finance in this regard. They also submitted that the same rate reduction can be taken as the basis of comparison for profiteering by not passing the benefit of input to the buyers. After going through all the documents available on record, it has been found that the respondent had charged GST @18% (effectively 12%) for the period 01.07.2017 to 25.01.2018 and thereafter at the reduced rate of GST @12% (effectively 8%) from his buyers in terms of Notification No. 01/2018-Central Tax (Rate) dated 25.01.2018. Further, the GST Council vide its 33<sup>rd</sup> meeting has indeed reduced the rates to 1% without ITC on affordable residential projects w.e.f. 01.04.2019, however it has also been revealed that for the on-going projects, the council had given option to the builder to pay GST at the old rates i.e effective 8% with ITC or new rate of 1% GST without ITC on affordable residential apartments. The quoted FAQs being suggestive in nature are not binding on the Respondent. Since, the allotment and sale of the flats of the Respondent commenced during the post-GST period and therefore there is no price history of the pre-GST, which is only event of increase in ITC in the whole period of investigation. It is found that, the Respondent has not availed of the option of 1% GST without ITC in terms of Notification No. 03/2019 w.e.f. 01.04.2019.
11. It has also been revealed from the first allotment cum demand letter of the Applicant Nos. 1, 2, 3 and 4 that allotment to all the Applicants was made in the Post GST Period.

Applicant	Date of Demand cum allotment letter
Applicant No. 1	05.07.2017
Applicant No. 2	05.07.2017
Applicant No. 3	25.01.2018
Applicant No. 4	05.07.2017



12. Based on the above discussion the Authority finds that the allotment of units, agreements, booking, construction activity and receipt of payments had taken place in the post-GST era. The draw of lots for allotment of houses was conducted on 05.07.2017 in the presence of the committee constituted under the Affordable Housing Policy, 2013. The Authority also finds that first BBA between the flat buyers & the Respondent was executed on 20.07.2017 in the post GST period. On the basis of the sequence of the above events, it could be safely concluded that the above project had started after coming in to force of the GST w.e.f. 01.07.2017 and Applicants were allotted flats only after coming in to force of the GST w.e.f. 01.07.2017, as the allotment cum first tax invoice for demand was issued after the implementation of the GST w.e.f. 01.07.2017, hence apparently there was no pre-GST tax rate or input tax credit availability that could be compared with the post-GST tax rate and the input tax credit, to determine whether there was any benefit that was required to be passed on by way of reduced price.
13. From the above facts it is established that there had been no additional benefit of ITC to the Respondent and hence he is not required to pass on the benefit to the above Applicants by reducing the prices of the flats. The Applicants could have availed the above benefit only if the above project was under execution/implementation before coming into force of the GST as the Respondent would have been eligible to avail ITC on the purchase of goods and services after 01.07.2017 on which he was not entitled to do so before the above date. Since there is no basis for comparison of ITC available before and after 01.07.2017, the Respondent is not required to recalibrate the price of the flats due to additional benefit of ITC. Hence, the allegations of the above Applicants made in this behalf are incorrect and therefore, the same cannot be accepted.
14. Based on the above facts the Authority finds that the Respondent had not contravened the provisions of Section 171 (1) of the CGST Act, 2017 and we find no merit in the Applications filed by the above Applicants and the same are accordingly dismissed.
15. Further, the Hon'ble Supreme Court, vide its Order dated 23.03.2020 in *Suo Moto Writ Petition (C) No. 03/2020*, while taking suo moto cognizance of the situation arising on account of Covid-19 pandemic, has extended the period of limitation prescribed under 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 or 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.

16. A copy of this order be sent to the Applicants and the Respondent free of cost. File of the case be consigned after completion.

Sd/-  
(Amand Shah)  
Technical Member &  
Chairman

Sd/-  
(Pramod Kumar Singh)  
Technical Member

Sd/-  
(Hitesh Shah)  
Technical Member

Certified Copy

o/c

  
Dinesh Meena  
(Secretary, NAA)

F. No. 22011/NAA/04/Forever Buildtech/2021-22 | 5907-5913 Date: 23.06.2022  
Copy to:-

1. **M/s Forever Buildtech Pvt. Ltd.**, Signature Global, 101, GF, Tower A, Signature Towers, South City-1, Sector-29, Gurugram, Haryana.
2. Sh. Abhinav Raina, S/o Bansi Lal Raina, A-2/218, IInd Floor, Gali No.10, Phase-5, Aya Nagar Extn, New Delhi-110047.
3. Sh. Ritesh Kumar khandelwal, Flat No.606, Tower-D Express Zenith Society, Sector-77, Noida, Uttar Pradesh-201301.
4. Sh. Anil Bhat, S/o C.L. Bhat, D-4, Flat No. 488 Penta Houses VIP Road, Zirakpur, Punjab-140603.
5. Sh. Rajesh, S/o Munna Lal, House No. 107, Naharpur, Sector-7, Rohini, Delhi-110085.
6. Directorate General of Anti-Profiteering, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, New Delhi-110001.
7. Guard File.