

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

I. O. No. : 24/2020
Date of Institution : 16.04.2020
Date of Order : 19.11.2020

In the matter of:

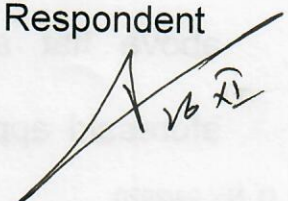
1. Sh. Saurabh Kumar, Infinity Tower-B, 4th Floor, DLF Cyber City, Phase-II, Sector-25A, Gurugram-122002.
2. Director-General of Anti-Profiteering, Central Board of Indirect Taxes & Customs, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.

Applicant

Versus

M/s. Pareena Infrastructure Pvt. Ltd., C-7A, 2nd Floor, Omax City Center Mall, Sohna Road, Sector-49, Gurugram (Haryana)-122002.

Respondent



Quorum:-

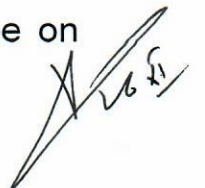
1. Dr. B. N. Sharma, Chairman
2. Sh. J. C. Chauhan, Technical Member
3. Sh. Amand Shah, Technical Member

Present:-

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

ORDER

1. The present Report dated 25.03.2020 has been received from the Applicant No. 2 i.e. the Director-General of Anti-Profiteering (DGAP) after a detailed investigation under Rule 129 (6) of the Central Goods & Service Tax (CGST) Rules, 2017. The brief facts of the case are that vide his application filed before the Standing Committee on Anti-profiteering under Rule 128 (1) of the CGST Rules, 2017, Applicant No. 1 had alleged profiteering by the Respondent in respect of the purchase of Flat in his "Laxmi Apartments" project located in Gurugram, Haryana. The above Applicant had also alleged that the Respondent had not passed on the benefit of Input Tax Credit (ITC) availed by him by way of commensurate reduction in the price of the above flat after implementation of GST w.e.f. 01.07.2017. The aforesaid application was considered by the Standing Committee on



Anti-profiteering, in its meeting held on 15.05.2019, wherein it was decided to forward the same to the DGAP to conduct a detailed investigation into the complaint according to Rule 129 (1) of the CGST Rules, 2017.

2. On receipt of the recommendation from the Standing Committee on Anti-profiteering, the DGAP had issued Notice dated 09.07.2019 under Rule 129 (3) of the above Rules, asking the Respondent to intimate as to whether he admitted that the benefit of ITC had not been passed on to the above Applicant by way of commensurate reduction in the price of the flat and in case it was so, to suo-moto compute the quantum of the same and mention it in his reply to the Notice along with the supporting documents. The Respondent was allowed to inspect the non-confidential evidence/information furnished by Applicant No. 1 during the period between 17.07.2019 to 19.07.2019 following Rule 129 (5) of the above Rules but the Respondent did not avail of the said opportunity. Vide e-mail dated 24.12.2019, Applicant No. 1 was also allowed to inspect the non-confidential documents/reply submitted by the Respondent on 26.12.2019. However, the Applicant did not avail of the said opportunity.
3. The DGAP has covered the period from 01.07.2017 to 30.06.2019 during the current investigation. The time limit to complete the investigation was extended up to 26.03.2020 by this Authority, vide letter dated 27.12.2019, in terms of Rule 129(6) of the Central Goods and Services Tax Rules, 2017.
4. The DGAP has further stated that the Respondent had submitted replies vide his letters/emails dated 23.07.2019, 05.08.2019,

11.09.2019, 12.09.2019, 19.09.2019, 24.09.2019, 14.10.2019, 27.11.2019, 10.12.2019, 18.03.2020. The Respondent, vide his above-mentioned submissions, had furnished the following documents before the DGAP:

- (a) Copies of GSTR-1 returns for the period from July 2017 to June 2019.
- (b) Copies of GSTR-3B returns for the period from July 2017 to June 2019.
- (c) Copies of all demand letters issued in the name of the Applicant.
- (d) Tax rates- pre-GST and post-GST.
- (e) Sample copies of bills/invoices, TRAN-1.
- (f) CENVAT Credit Register for F.Y. 2016-17.
- (g) Audit Report for F.Y. 2017-18.
- (h) ST-3 Returns for the period April-16 to June-17, VAT Assessment 2014-15.
- (i) Copy of Balance Sheet for FY 2016-17& FY 2017-18.
- (j) Copy of Electronic Credit Ledger for the period 01.07.2017 to 31.11.2017.
- (k) Details of projects undertaken by the company.
- (l) Input tax credit register for the period from July 2017 to June 2019.
- (m) Details of turnover and input tax credit for the project "Laxmi Apartment".
- (n) List of homebuyers in the project "Laxmi Apartment"
- (o) Copy of Project Report of RERA.
- (p) Reconciliation of turnover reported in GSTR-3B with the list of home buyers.



(q) Details of sold / unsold flats.

5. The Respondent had further submitted the following submissions before the DGAP:

a) That the project was his first construction project which was under the Affordable Housing Scheme under Haryana Affordable Housing Policy, 2013, for which he had obtained license, sanction plan, Pollution NOC, etc. from respective departments.

b) That VAT and Service Tax were not admissible to him since the project was an affordable housing project under the Haryana Affordable Housing Policy, 2013; that thus he did not charge the same from his customers; that he had submitted the ledger account and copies of bills against the purchase of inputs on which VAT credit was availed.

c) That audit of his project had been conducted by the GST officers for the period up to June 2017 and that he had submitted the copy of Internal Audit Report (IAR) No. 18/2018-19 dated 20.07.2018 to the DGAP.

d) That he had passed on Rs. 1,59,35,584/- as the benefit of ITC to his customers; that the benefit amounting to Rs 1,59,35,584/- had been calculated @ 3%; that in support of his claim he had submitted copies of the demand-cum-tax invoices issued by him to his homebuyers, wherein the amount of benefit passed on to his customers has been shown as 'discount given to customers as the benefit of ITC'.

6. The DGAP has reported that scrutiny of the case records has revealed that the main issue for determination in the instant case was as to whether there has been a reduction in the rate of tax or benefit of ITC on the supply of construction service by the Respondent after implementation of the GST w.e.f. 01.07.2017 and in case it was so, whether the Respondent had passed on the above benefits to the home buyers as per the provisions of Section 171 of the CGST Act, 2017 or not.
7. The DGAP has further reported that the Respondent, vide his letter dated 27.11.2019, submitted a copy of the Apartment Buyer's Agreement of his project "Laxmi Apartment" along with the payment schedule for the purchase of flats at the basic sale price of Rs. 4000/- per square feet for the carpet area of the flat and Rs. 500/- per square feet for the balcony area. Further, the Respondent, vide his letter dated 24.09.2019, submitted copies of the demand letters issued by him to Applicant No. 1. The details of amount of installments and the taxes paid by Applicant No. 1 to the Respondent were furnished by the DGAP as is given in Table-'A' below:-

Table-'A'

(Amount in Rs)

S. No.	Payment Stage	Due Date	Basic %	BSP	Discount	Service Tax/CGST	Service tax/IGST	Total Amount payable	Amount paid
1	At the time of booking	03.07.2015	5.00%	87,467	-	-	-	87,467	87,467
2	At the time of allotment of flat	23.11.2015	20.00%	3,49,866	-	-	-	3,49,866	3,49,866
3	Within 06 months of the date of issuance of offer of Allotment letter	23.03.2016	12.50%	2,18,666	-	-	-	2,18,666	2,18,666
4	Within 12 months of the date of issuance of offer of	23.11.2016	12.50%	2,18,666	-	-	-	2,18,666	2,18,666

	Allotment letter								
5	Within 18 months of the date of issuance of offer of Allotment letter	23.03.2017	12.50%	2,18,666	-	-	-	2,18,666	2,18,666
6	Within 24 months of the date of issuance of offer of Allotment letter	23.11.2017	12.50%	2,18,666	-	8,747	8,747	2,36,160	2,36,160
7	Within 30 months of the date of issuance of offer of Allotment letter	23.03.2018	12.50%	2,18,666	-	8,747	8,747	2,36,160	2,36,160
8	Within 36 months of the date of issuance of offer of Allotment letter	23.11.2018	12.50%	2,18,666	19,680	7,960(12.50% of 1,98,988)	7,960(12.50% of 1,98,988)	2,14,908	0
Total			100%	17,29,65		25,454	25,454	15,85,651	1565651

8. The DGAP has further observed that the contention of the Respondent that he had passed on the benefit of input tax credit to his buyers when the last installment was demanded post completion of construction and final calculation of the cost of the project, might be correct but profiteering, if any, has to be determined at a given point of time, in terms of Rule 129(6) of the Central Goods and Services Tax Rules, 2017. Therefore, the input tax credit available to the Respondent and the amount received by him from the above Applicant and other home buyers post implementation of GST, has to be taken into account for determining the benefit of input tax credit that was required to be passed on to the Applicant No. 1 and other home buyers.
9. The DGAP has further stated that 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) 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 in respect of those residential units which were under construction, but not yet sold, was provisional and it would have to be reversed by the Respondent, if such units would 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 DGAP has stated that the ITC pertaining to the unsold units was outside the scope of this investigation and the Respondent

was required to recalibrate the selling price 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.

11. The DGAP has also observed that before 01.07.2017, i.e., before the GST was introduced, as the service of construction of affordable housing, provided by the Respondent, was exempt from Service Tax, vide Notification No. 25/2012-ST dated 20.06.2012, as amended by Notification No. 9/2016-ST dated 01.03.2016, thus the Respondent was not eligible to avail credit of Central Excise duty paid on inputs/capital goods or Service Tax paid on input services. Further, the DGAP has observed from the invoices and ledgers etc. submitted by the Respondent, that the Respondent was paying VAT under the normal VAT scheme and was therefore eligible to avail input tax credit of VAT paid on the inputs purchased by him. In the Post-GST period, the Respondent became eligible to avail the input tax credit of GST paid on inputs and input services, including on sub-contracts. Based on the data submitted by the Respondent for the period from April 2016 to June 2019, the details of the input tax credit availed by the Respondent, his turnover from the project "Laxmi Apartments", the ratio of input tax credit to turnover for the pre-GST period (April 2016 to June 2017) and the post-GST (July 2017 to June 2019) period was worked out by the DGAP as per the Table-B below:

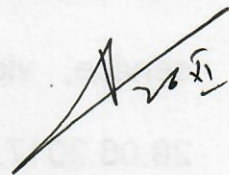


Table-'B'

(Amount in Rs.)

S. No.	Particulars	Total April, 2016 to June, 2017	01.07.2017 to 24.01.2018	25.01.2018 to 30.06.2019	Total (Post-GST)
		1	CENVAT credit of Service Tax Paid on Input Services (A)	0	
2	Input Tax Credit of VAT paid on Inputs (B)	1,07,07,174			
3	Input Tax Credit of GST Availed (C)	-	60,93,539	1,83,55,968	2,44,49,507
4	Total CENVAT/Input Tax Credit Available (D)=(A)+(B) or (C)	1,07,07,174	60,93,539	1,83,55,968	2,44,49,507
5	Total Turnover (E)= (C)+(D)	52,45,32,488	24,86,99,725	38,43,09,048	63,30,08,773
6	Total Saleable Carpet Area (in Sq Ft) (F)	4,33,504		4,33,504	4,33,504
7	Saleable Area relevant to turnover (in Sq Ft)(G)	3,59,420		4,15,085	4,15,085
8	ITC relevant to Sold Area [(H)= (D)*(G)/(F)]	88,77,363		2,34,10,680	2,34,10,680
9	Ratio of Input Tax Credit to Turnover [(I)=(H)/(E)*100]	1.69%		3.70%	3.70%

12. The DGAP has also submitted from the above Table-'B' that the input tax credit as a percentage of the total turnover that was available to the Respondent during the pre-GST period (April 2016 to June 2017) was 1.69% and during the post-GST period (July 2017 to June 2019), it was 3.70% which evidenced that in the post GST period, the Respondent has been benefited from additional input tax credit to the tune of 2.01% [3.70% (-) 1.69%] of the turnover.

13. The DGAP has further submitted that the Central Government, on the recommendation of the GST Council, had levied 18% GST (effective rate was 12% because of 1/3rd abatement on value) on construction service, vide Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017. The effective GST rate on construction service in respect

of affordable and low-cost housing was further reduced from 12% to 8%, vide Notification No. 1/2018-Central Tax (Rate) dated 25.01.2018. Given the change in the GST rate after 01.07.2017, the DGAP has examined the issue of profiteering in two parts, i.e., (1) the post-GST period from 01.07.2017 to 24.01.2018, when the effective GST rate was 12% and (2) the post -GST period from 25.01.2018 to 31.08.2018, when the effective GST rate was reduced to 8%. Accordingly, based on Table-B above, the increase in the input tax credit availed/available, the Respondent's turnover, the recalibrated basic price, and the excess collection by the Respondent (profiteering) during the post-GST period has been tabulated by the DGAP as has been given in Table-'C' below:-

Table-C

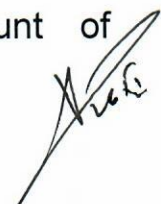
(Amount in Rs.)

S. No.	Particulars		Pre-GST	Post- GST		
				April 2016 to June 2017	July 2017 to January 24 th , 2018	January 25 th , 2018 to June 2019
1	Period	A	April 2016 to June 2017	July 2017 to January 24 th , 2018	January 25 th , 2018 to June 2019	Total (July 2017 to June 2019)
2	VAT/Service Tax/GST rate (%)	B	0	12	8	
3	The ratio of CENVAT/ VAT/Input Tax Credit to Turnover as per Table – 'C' above (%)	C	1.69%	3.70%	3.70%	2.01%
4	Increase in ratio of input tax credit availed post-GST (%)	D	1.69%	3.70%	3.70%	2.01%
5	<u>Analysis of Increase in input tax credit:</u>		-			
6	Base Price collected from July 2017 to June 2019 (Gross Turnover) (Rs)	E	-	24,86,99,725	3843,09,048	6330,08,773
7	GST Collected on Basic Price(Rs)	F= E*12% or 8%	-	2,98,43,967	307,44,724	605,88,691
8	Total Demand raised (Rs)	G=E+F	-	27,85,43,692	4150,53,772	6935,97,464
9	Recalibrated Basic Price(Rs)	H=E*(1-D) or 97.99 % of E	-	24,37,00,861	37,65,84,436	62,02,85,297
10	GST @12/8% (Rs)	I= H*12/8%	-	2,92,44,103	3,01,26,755	5,93,70,858

11	Commensurate demand price (Rs)	J= H+I	-	27,29,44,964	40,67,11,191	67,96,56,155
12	Excess Collection of Demand or Profiteering Amount (Rs)	K= G-J	-	55,98,728	83,42,581	1,39,41,309

14. The DGAP has also observed from the above Table- 'C' that the input tax credit of 2.01% of the turnover should have resulted in commensurate reduction in the base price as well as cum-tax price. Therefore, in terms of Section 171 of the Central Goods and Services Tax Act, 2017, the benefit of the additional input tax credit that had accrued to the Respondent, was required to be passed on to the home buyers.

15. Based on the aforesaid CENVAT/input tax credit availability pre and post-GST and the details of the amount collected by the Respondent from the applicant and other home buyers during the period 01.07.2017 to 24.01.2018, the amount of benefit of input tax credit not passed on by the Respondent to the home buyers or in other words, the profiteered amount has been quantified by the DGAP as Rs. 55,98,728/- which includes 12% GST on the base profiteered amount of Rs 49,98,891/-. Further, the amount of benefit of input tax credit that needed to be passed on by the Respondent to the home buyers during the period 25.01.2018 to 30.06.2019, comes to Rs 83,42,581/- which includes 8% GST on the base profiteered amount of Rs 74,48,733/-. Therefore, the total profiteered amount during the period from 01.07.2017 to 30.06.2019 came to Rs. 1,39,41,309/- which includes GST (@ 12% or 8%) on the base profiteered amount of



Rs.1,24,47,461/-. The homebuyer-wise and unit-wise break-up of this amount was given in the Annexure-17 of the DGAP report. This amount was inclusive of Rs 13,989/- (including GST) which was the profiteered amount in respect of Applicant No. 1. It was also observed by the DGAP that the Respondent had supplied the construction services in the State of Haryana only.

16. The DGAP has further stated that the Respondent had claimed that he had already passed on the benefit of Rs. 1,55,06,800/- to the home buyers. A summary of category-wise input tax credit benefit required to be passed on and the benefit claimed to have been passed on by the Respondent, was furnished by the DGAP as is given in table-'D' below:-

Table-D

(Amount in Rs.)

Sr. No.	Category of Customers	No. of Units	Area (in Sqf)	Amount Received Post GST	Profiteering Amt. as per Annex-17	Benefit claimed to have been Passed on by the Respondent	Difference	Remark
A	B	C	D	E	F	G	H=F-G	I
1	Applicant	1	524.83	6,36,320	13,989	19,680	-5,691	Excess Benefit passed on as per Annex-17
2	Other Buyers	769	4,14,561	63,23,72,453	1,39,27,320	1,54,87,120	-15,59,800	Excess Benefit passed on as per Annex-17
3	Other Buyers	11	5,974	0	0	0	0	No Consideration Paid Post-GST
	Total (A)	781	4,21,060	63,30,08,773	1,39,41,309	1,55,06,800	-15,65,491	
4	other units	23	12,444	0	0	0	0	unsold units
	Total(B)	23	12,444	0	0	0	0	
	Grand Total (C)=(A)+(B)	804	4,33,504	0	0	0	0	

17. From Table-D above, the DGAP has observed that the benefit claimed to have been passed on by the Respondent was higher than the commensurate benefit that ought to have passed on by the Respondent in the case of 770 residential flats (Sr. No. 1 & 2 of Table-D) and that the aggregate excess benefit passed on by the Respondent worked out to Rs. 15,59,800/-, which is detailed in Annexure-17 of the DGAP's Report. The DGAP has further stated that such excess benefit, claimed to have been passed on by the Respondent to some of the homebuyers, could not be set off against the additional benefit that was required to be passed on to the other homebuyers and that such excess amount of benefit could only be adjusted against any future benefit that might accrue to such recipient who had received the excess benefit.
18. The DGAP has further mentioned that the Respondent had booked 804 flats in the pre-GST period and had received booking amount from 687 home buyers in the pre-GST period and 770 demands have been raised from 781 home buyers during the period 01.07.2017 to 30.06.2019 (Post-GST) (period under investigation) whereas there were 11 flats where no demands had been raised in post GST period. Therefore, the above computation of profiteering was concerning 770 [781 (-) 11] flats only where demands had been raised and/or payment had been received in the post-GST period. Therefore, the profiteering in respect of these 11 units merited to be calculated when the consideration was received in the post-GST period.
19. The DGAP has further stated that the benefit of input tax credit amounting to 2.01% of the turnover has accrued to the Respondent



and the same was required to be passed on to Applicant No. 1 and other recipients. Therefore, the provision of Section 171 of the Central Goods and Services Tax Act, 2017 was contravened by the Respondent in as much as the additional benefit of input tax credit @ 2.01% of the turnover (base price) received by the Respondent during the period 01.07.2017 to 30.06.2019 has not passed on. Total Profiteering of Rs. 1,39,41,309/- was established against the Respondent (including Rs 19,680/- of the Applicant No. 1). The Respondent had claimed to have passed on the benefit of ITC of Rs. 1,55,06,800/- to various buyers (including Rs. 19,680/- to the above Applicant).

20. The DGAP has also stated that the present investigation has covered the period from 01.07.2017 to 30.06.2019. Profiteering, if any, for the period post-July 2019 had not been examined by him, as the exact quantum of input tax credit that would be available to the Respondent in the future could not be determined at this stage when the construction of the project was yet to be completed. The DGAP has further stated that the provisions of Section 171(1) of the Central Goods and Services Tax Act, 2017 requiring that "a 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", had been contravened by the Respondent in the present case.

21. The above Report was considered by the Authority in its meeting and it was decided that the Applicant and the Respondent be asked to appear before the Authority on 26.05.2020. The Respondent was

issued a notice on 04.05.2020 to explain why the above Report of the DGAP should not be accepted and his liability for violating the provisions of Section 171 of the CGST Act, 2017 should not be fixed. During the course of the hearings, no one appeared for the Applicant and the Respondent. Further, the Respondent vide his e-mail dated 22.06.2020 has stated that he had already filed all his submissions before the DGAP and he did not have any further submissions to be filed before this Authority. Accordingly, hearings in the matter were closed on 23.06.2020.

22. We have carefully considered all the submissions filed by the Applicants, the Respondent and the other material placed on record. We find that Applicant No. 1, vide his complaint, has alleged that the Respondent was not passing on the benefit of ITC to him even though he was availing ITC on the purchase of the inputs at the higher rates of GST which had resulted in the benefit of ITC to him and that the Respondent was also charging GST from him @12%. These complaints were examined by the Standing Committee in its meeting held on 15.05.2019 and forwarded to the DGAP for investigation. The DGAP, vide his Report dated 23.03.2019 has found that the ITC as a percentage of the total turnover which was available to the Respondent during the pre-GST period was 1.69% and during the post-GST period this ratio was 3.70%, details of which are given in Table-B of the DGAP's Report. We observe that the DGAP has reported that the Respondent has benefited from ITC to the tune of 2.01% (3.70% - 1.69%) of his total turnover during the post-GST period which he was required to pass on to the flat buyers of his

project. The DGAP has also found that the Respondent had not reduced the basic prices of his flats by 2.01% on the account of benefit from ITC although he had been charging his homebuyers, GST at the increased rate of 12% on the pre-GST basic price. The DGAP has also reported that the Respondent has thus contravened the provisions of Section 171 of the CGST Act, 2017. The DGAP has also reported that the amount of benefit of ITC which has not been passed on by the Respondent, i.e. the aggregate profiteered amount, came to Rs. 1,39,41,309/- including the GST applicable to the basic profiteered amount of Rs. 1,24,47,461/-. The DGAP has also reported that the above aggregate amount of profiteering also included the profiteered amount of Rs. 13,989/- (inclusive of GST as applicable) for Applicant No. 1.

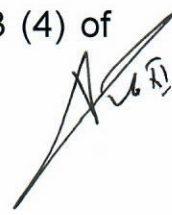
23. It is clear to us from the documents placed on record that there are the following issues arise on the DGAP's report and Annexures submitted along with the above Report:

- a. The Respondent has claimed to have passed on the benefit of input tax credit (ITC) amounting to Rs. 19,680/- to the Applicant No. 1 and Rs. 1,54,87,120 to the 769 other buyers. This claim of the Respondent has not been verified by way of obtaining acknowledgments from the buyers.
- b. It is also apparent from the record that the Respondent has claimed to have passed on the ITC benefit of Rs. 1,55,06,800/- on account of the profiteering established against him for the period from July 2017 to June 2019. Therefore, the Respondent is also liable to pass on interest @18% on the

profiteered amount to the flat buyers from the dates from which he has received the additional amount of consideration from them till the passing on of the ITC benefit, as he has used this amount in his business, as per the provisions of Section 171 (1) of the CGST Act, 2017 read with Rule 133 (3) (b) of the above Rules. It has not been explained in the Report whether the Respondent has passed on the ITC benefit along with the applicable interest or not.

- c. There is a significant difference between the turnover of the Respondent for the period from April 2016 to June 2017 as per DGAP's Report which is based on the homebuyers' list and the Statutory Returns filed by him during the above period. This difference in the turnovers has not been explained.
- d. Similarly, there is a difference in the turnover of the Respondent for the period from July 2017 to June 2019 as per DGAP's Report and the Statutory Returns filed by him during the above period. This difference in the turnovers has not been explained.
- e. Further, the Respondent has claimed that he has availed VAT credit of Rs. 1,07,07,174 during the period from April 2016 to June 2017 but he has not submitted any proof/evidence to justify his claim. This claim of the Respondent has not been examined.

24. Based on the above reasons the Report dated 23.03.2020 furnished by the DGAP cannot be accepted and accordingly, the DGAP is directed to further investigate the present case under Rule 133 (4) of



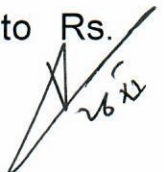
the CGST Rules, 2017 up to 30.10.2020 or till the date of issue of Completion Certificate, whichever is earlier, on the following issues:-

- a. The claim of the Respondent that he has passed on the ITC benefit amounting to Rs. 19,680/- to Applicant No. 1 and amounting to Rs. 1,54,87,120 to the 769 other buyers, needs to be verified by obtaining acknowledgments from approximately 10% (78 buyers) of the buyers selected randomly from the list of all homebuyers, as mentioned below:

Sr. No.	Sr. No. in Annexure-17	Unit No.	Name of Buyer
1	209	207	Saurabh Kumar
2	550	205	Braj Kishor Sharma
3	45	407	Narender Singh
4	79	904	Pradeep Kumar Sharma
5	318	508	Jatin Kumar Khurana
6	285	104	Girwar Singh
7	347	906	Pankaj Gupta
8	257	902	Suresh Chandra Parida
9	456	1107	Shashank Raina
10	585	705	Anthony Joseph
11	58	605	Jaiprakash Banduni
12	586	706	Jitender Singh Negi
13	675	905	Moolchand Bansal
14	530	906	Geeta Kaul
15	123	307	Santosh Kumari
16	30	208	Sanjeev Parmar
17	490	404	Suresh Kumar Ashra
18	509	607	Om Prakash Singh
19	472	201	Mir Basharat Ahmad Kanth
20	737	803	Kanhaiya Lal Vyas
21	409	505	Rimpi Ahuja
22	117	208	Renuka Deshwal
23	388	204	Sundar Lal
24	60	607	Tarief Singh
25	188	1202	Baby Kumari Pandit
26	671	901	Saroj Gupta
27	183	1105	Amit Sharma
28	572	504	Vipin Arora
29	613	102	Shikhar Dwivedi
30	9	1101	Pukhraj Choudhary
31	615	104	Devi Kala Sharma

32	267	1004	Jaskiran Chopra
33	143	604	Seema
34	138	507	Gokul Prasad
35	353	1001	Ashish Jain
36	478	207	Ashish Singh
37	271	1103	Ritika Kapoor
38	304	308	Veena Arora
39	469	106	Pawan Kumar Yadav
40	38	308	Kashmir Singh
41	491	405	Rameshwar Dass
42	509	607	Om Prakash Singh
43	140	601	Lalit Uppal
44	605	1001	Rekha Tripathi
45	117	208	Renuka Deshwal
46	82	907	Anamika Anupam
47	752	602	Ravi Sharma
48	57	604	Manoj Prasad Pundora
49	665	803	Komal Malhotra
50	630	304	Rohit Kumar
51	55	601	Lakhi Ram
52	201	107	Pradeep Kumar
53	766	607	Vishal Bansal
54	214	304	Abhimanyu Mahajan
55	163	901	Ankita Anand
56	613	102	Shikhar Dwivedi
57	610	1007	Yuvraj Uboveja
58	509	607	Om Prakash Singh
59	348	907	Vinod Soni
60	343	902	Gaurav Arora
61	118	301	Hari Pal Singh
62	626	208	Vidyanand Yadav
63	112	203	Manoj Kumar Sharma
64	135	504	Zorawar Singh Rana
65	25	203	Babita Arora
66	428	802	Rakesh Malik
67	187	1201	Ajit Duhan
68	10	1103	Sangeetha Sharma
69	681	1003	Vijay Garg
70	159	805	Usha Mishra
71	530	906	Geeta Kaul
72	146	607	Swati Gulati
73	149	703	Raj Singh
74	334	708	Mukesh Kumar Sharma
75	340	807	Manpreet Singh
76	378	102	Anita Kumari
77	183	1105	Amit Sharma
78	99	1202	Deepak Arora

b. It is also apparent from the record that the Respondent has claimed to have passed on ITC benefit amounting to Rs.

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1,55,06,800/- on account of profiteering for the period from July 2017 to June 2019. Therefore, he is also liable to pass on interest @18% on the profited amount to the flat buyers from the dates from which he has received the additional amount of consideration from them till the passing on of the ITC benefit, as he has used this amount in his business, as per the provisions of Section 171 (1) of the CGST Act, 2017 read with Rule 133 (3) (b) of the above Rules. The DGAP is directed to investigate, compute and ensure that the applicable interest is also paid to all eligible house buyers.

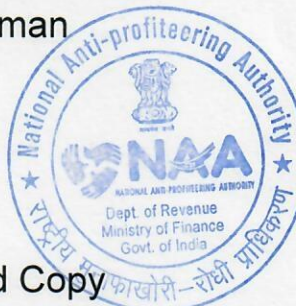
- c. The difference in the turnover of the Respondent for the period from April 2016 to June 2017 adopted in the DGAP's Report and the Statutory Returns filed by him during the above period needs to be reconciled and explained with proper supporting documents.
- d. Similarly, the difference in the turnover of the Respondent for the period from July 2017 to June 2019 adopted in the DGAP's Report and Statutory Returns filed by him during the above period needs to be reconciled and explained with proper supporting documents.
- e. Further, the claim of the Respondent that he has availed VAT credit of Rs. 1,07,07,174/- during the period April 2016 to June 2017 needs to be verified whether he was eligible to claim ITC on the VAT which he has paid during the period from April 2016 to June 2017 as per the provisions of the Haryana VAT Act, 2003 or not.

25. It is also directed that a detailed Report shall be submitted under Rule 129 (6) of the above Rules. It is further directed that copies of the Assessment Orders if any passed on the VAT and Service Tax liability of the Respondent during the period from April 2016 to June 2017 shall also be furnished along with the Report. If required the DGAP shall be at liberty to take assistance of the jurisdictional GST Authorities of the Central and the State Government, who are directed to extend all cooperation to the DGAP in terms of Rule 136 of the CGST Rules, 2018 and Para 38 of the "Methodology & Procedure" framed under 126 of the CGST Rules, 2017 notified on 28.03.2018 by this Authority. The respondent is also directed to extend all assistance to the DGAP during the course of further investigation of the present case.
26. As per the provisions of Rule 133 (1) of the CGST Rules, 2017 this order was required to be passed within a period of 6 months from the date of receipt of the Report from the DGAP under Rule 129 (6) of the above Rules. Since the present Report has been received by this Authority on 16.04.2020 the order was to be passed on or before 15.10.2020. However, due to the prevalent pandemic of COVID-19 in the Country, this order could not be passed on or before the above date due to force majeure. Accordingly, this order is being passed today in terms of the Notification No. 65/2020-Central Tax dated 01.09.2020 issued by the Government of India, Ministry of Finance (Department of Revenue), Central Board of Indirect Taxes & Customs under Section 168 A of the CGST Act, 2017.

27. A copy each of this order be supplied to both the Applicant, the Respondent for necessary action. File be consigned after completion.

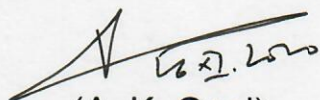
Sd/-
(Dr. B. N. Sharma)
Chairman

Sd/-
(J. C. Chauhan)
Technical Member



Sd/-
(Amand Shah)
Technical Member

Certified Copy



(A. K. Goel)
Secretary, NAA

F. No. 22011/NAA/152/Pareena/2020 /6176-79 Date: 26.11.2020

Copy To:-

1. M/s Pareena Infrastructure Pvt. Ltd., C-7A, 2nd Floor, Omax City Centre Mall, Sohna Road, Sector-49, Gurugram (Haryana)-122002..
2. Director General Anti-Profiteering, Central Board of Indirect Taxes & Customs, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.
3. Saurabh Kumar, Infinity Tower-B, 4th Floor, DLF Cyber City, Phase-II, Sector-25A, Gurugram-122002.
4. NAA website/Guard File.

o/c


A. K. GOEL
SECRETARY, NAA