

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

I.O. No.	14/2020
Date of Institution	23.09.2019
Date of Order	19.03.2020

In the matter of:

1. Smt. Naina Rani, T4/1204, Taksila Heights, Sector-37C, Opp. Sector-10, Near Basai Chowk, Gurgaon-122001.
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.

Applicants

Versus

M/s Pivotal Infrastructure Pvt. Ltd., 309, 3rd Floor, JMD Pacific Square, Sector -15, Part -II, Gurgaon -122001.

Respondent


15.3.2020

Quorum:-

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

Present:-

1. Sh. Amit Kumar for the Applicant No. 1.
2. None for the Applicant No. 2.
3. Sh. Suresh Kumar, Company Representative and Sh. Narottam Rawat, Chartered Accountant, for the Respondent.

ORDER

1. The present Report dated 16.09.2019 has been received from the Applicant No. 2 i.e. the Director General of Anti-Profiteering (DGAP) after detailed investigation under Rule 129 (6) of the Central Goods & Service Tax (CGST) Rules, 2017, on 23.03.2019. The brief facts of the case are that vide her application dated 30.11.2018 filed before the Standing Committee on Anti-profiteering under Rule 128 of the CGST Rules, 2017, the Applicant No. 1 had alleged profiteering by the Respondent in respect of purchase of Flat in the "Ridhi Siddhi" project of the Respondent situated at Sector-62, Gurgaon. The above Applicant had also alleged that the Respondent had not passed on the benefit of ITC (ITC) availed by him by way of commensurate reduction

in the price of the above flat. The aforesaid reference was considered by the Standing Committee on Anti-profiteering, in its meeting held on 11th March, 2019, wherein it was decided to forward the same to the DGAP to conduct detailed investigation in 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 04.04.2019 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 given opportunity to inspect the non-confidential evidence/information furnished by the Applicant No. 1 during the period between 10.04.2019 to 12.04.2019 in accordance with Rule 129 (5) of the above Rules but the Respondent did not avail of the said opportunity. Vide e-mail dated 19.06.2019, the above Applicant was also given opportunity to inspect the non-confidential documents/reply submitted by the Respondent on 24.06.2019 or 25.06.2019. However, the Applicant did not avail of the said opportunity.
3. The DGAP has covered the period from 01.07.2017 to 31.03.2019 during the current investigation. The time limit to complete the investigation was extended by this Authority, vide its order dated 19.06.2019. in terms of Rule 129 (6) of the above Rules.

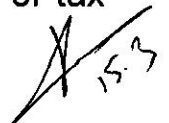


4. The DGAP has stated in his above Report that the Respondent had submitted replies vide his letters/emails dated 16.04.2019, 25.04.2019, 29.04.2019, 07.06.2019, 11.06.2019, 17.06.2019 and 01.08.2019. The submissions of the Respondent were summed up by the DGAP as is mentioned in the subsequent Para.
5. The Respondent has stated before the DGAP that he had informed the above Applicant over telephone and through e-mail regarding passing on the benefit of ITC. He has also stated that a number of changes were taking place in the GST regime, such as, change in the GST rates and applicability of GST on Affordable Housing Projects. The Respondent has further stated that he had ensured that the benefit of actual ITC would be passed on to all his customers. The Respondent, vide his e-mail dated 07.06.2019, had submitted sample copies of letters issued to individual home buyers, informing them about the benefit of ITC as per his calculation and credit of the same to them. The Respondent had submitted the ledger account of the Applicant No. 1 showing an entry dated 31.03.2019 of Rs. 12,517/- (including 8% GST on Rs. 11,590/-) as GST benefit passed on and copy of the credit note dated 31.03.2019 issued to the above Applicant. The Respondent had also submitted that he had passed on total benefit of Rs. 1,21,08,722/- to the home buyers.
6. The Respondent has also submitted the following documents/information to the DGAP vide his above mentioned letters/e-mails during the course of the investigation:-



- (a) Copies of GSTR-1 Returns for the period from July, 2017 to March, 2019.
- (b) Copies of GSTR-3B Returns for the period from July, 2017 to March, 2019.
- (c) Copies of VAT Returns (including all annexures) & ST-3 Returns for the period from April, 2016 to June, 2017.
- (d) Copies of all demand letters issued and sale agreement made with the Applicant.
- (e) Copies of Balance Sheets for the FY 2016-17 & 2017-18.
- (f) Copy of Electronic Credit Ledger for the period from 01.07.2017 to 31.03.2019.
- (g) CENVAT/ITC Register for the FY 2016-17, 2017-18 and 2018-19.
- (h) Details of VAT, Service Tax, ITC of VAT and CENVAT Credit for the period from April, 2016 to June, 2017, for the project "Riddhi Siddhi".
- (i) List of home buyers in the project "Riddhi Siddhi" alongwith details of benefit passed on.
- (j) Copy of RERA Registration Certificate of the Project "Riddhi Siddhi".
- (k) Copy of Tran-1 Statement.

7. The DGAP has also submitted that all the documents placed on record were carefully examined by him and he has found that the main issues for determination were whether there was reduction in the rate of tax



or benefit of ITC on the supply of construction service made 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.

8. The DGAP has further submitted that the Respondent, vide his letter dated 15.04.2019 had submitted that he had informed the Applicant from time to time through telephonic conversation about the benefit of ITC and assured the above Applicant that he would pass on the above benefit to all his customers as early as possible. The Respondent, vide his e-mail dated 07.06.2019 had submitted sample copies of letters issued to the individual flat buyers, informing them about the benefit of ITC as per his calculation and credit of the same to their accounts. The Respondent, vide his e-mail dated 17.06.2019, had also submitted the ledger account of the Applicant No. 1 showing an entry dated 31.03.2019 of Rs. 12,517/- (including 8% GST on Rs. 11,590/-) as GST benefit passed on and copy of the credit note dated 31.03.2019 issued to the above Applicant.
9. The Respondent had submitted a copy of RERA Registration Certificate of his Project "Riddhi Siddhi" and the payment schedule for the purchase of flats at the basic sale price of Rs. 4,000/- per square feet for the carpet area and Rs. 500/-per square feet for the balcony area. The Respondent, vide letter dated 25.04.2019 and subsequent e-mails, had submitted copies of demand letters issued to the above Applicant. The details of amounts and taxes paid by the Applicant No.

1 to the Respondent were furnished by the DGAP as given is mentioned in Table-A below:-

Table-'A'

(Amount in Rs.)

Sr. No.	Payment Stage	Demand Date	% of BSP	Instalment (Rs.)	Service Tax (Rs.)	VAT (Rs.)	GST (Rs.)	GST Benefit (Rs.)	Total Amount payable (Rs.)
1	At the time of booking	05.07.2015	5.00%	99,900	17483	--	--	--	5,16,983
2	Within 15 days of the date of Allotment letter		20.00%	3,99,600					
3	Within 06 months of the date of Allotment letter	01.02.2016	12.50%	2,49,750	9,053	--	--	--	2,58,803
4	Within 12 months of the date of Allotment letter	03.08.2016	12.50%	2,49,750	--	--	--	--	2,49,750
5	Within 18 months of the date of Allotment letter	03.02.2017	12.50%	2,49,750	--	--	--	--	2,49,750
6	Within 24 months of the date of Allotment letter	02.08.2017	12.50%	2,49,750	--	--	29,970	--	2,79,720
7	Within 30 months of the date of Allotment letter	03.02.2018	12.50%	2,49,750	--	--	19,980	--	2,69,730
8	Within 36 months of the date of Allotment letter	02.08.2018	12.50%	2,49,750	--	--	19,980	--	2,69,730
9	Miscellaneous & Credit Note	31.03.2019 & 30.04.2019	--	--	--	62,437	--	(12,517)	49,830
Grand Total			100.00%	19,98,000	26,536	62,437	69,930	(12,517)	21,44,296

10. The DGAP has also claimed that para 5 of Schedule-III of the Central Goods and Services Tax Act, 2017, defining 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 para 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,

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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". In the light of these provisions, the DGAP has contended that the ITC pertaining to the units which were under construction but not sold was provisional ITC that would be required to be reversed by the Respondent, if such units would remain unsold at the time of issue of Completion Certificate (CC), in terms of Section 17 (2) & Section 17 (3) of the Central Goods and Services Tax Act, 2017 which read as under:-

"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.

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,

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transactions in securities, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.”

Therefore, the DGAP has claimed 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 ITC available to him post-GST.

11. The DGAP has further claimed that prior to 01.07.2017 i.e. before the GST was introduced, as the service of construction of affordable housing provided by the Respondent, was exempted 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), the Respondent was not eligible to avail CENVAT credit of Central Excise Duty paid on the inputs or Service Tax paid on the input services, as per the CENVAT Credit Rules, 2004, which were in force at the material time. However, the Respondent was eligible to avail credit of Service Tax paid on the input services (CENVAT credit of Central Excise Duty was not available) in respect of the commercial shops sold by him. The Respondent was also eligible to avail ITC of VAT paid on the inputs. Further, post-GST, the Respondent could avail ITC of GST paid on all the inputs and input services. From the data submitted by the Respondent covering the period from April, 2016 to March, 2019 the details of the ITC availed by him, his turnover from the project “Riddhi Siddhi”, the ratio of ITC to turnover, during the pre-GST period from

April, 2016 to June, 2017 and post-GST period from July, 2017 to March, 2019 has been furnished by the DGAP as per the Table-B given below:-

Table-'B'

(Amount in Rs.)

Sr. No.	Particulars	Total (Pre-GST) April, 2016 to June, 2017	Taxable Turnover @ 12% GST (01.07.2017 to 24.01.2018) for flats & (01.07.2017 to 31.03.2019) for Commercial shops	Taxable Turnover @ 8% GST (25.01.2018 to 31.03.2019)	Total (Post-GST)
1	CENVAT of Service Tax Paid on Input Services used for Commercial Shops (A)	72,73,736	-	-	-
2	ITC of VAT Paid on Purchase of Inputs (B)	43,75,985	-	-	-
3	Total CENVAT/ITC Available (C)= (A+B)	1,16,49,721	-	-	-
4	ITC of GST Aailed (D)	-	74,57,417	2,16,87,719	2,91,45,136
5	Turnover for Residential Flats as per Home Buyers List (E)	46,54,88,000	-	-	-
6	Turnover for Commercial Shops as per Home Buyers List (F)	9,89,00,982	-	-	-
7	Total Turnover (G)= (E)+(F)	56,43,88,982	29,27,37,772	46,54,88,000	75,82,25,772
8	Total Saleable Carpet Area (Excluding Balcony Area*) (in SQF) (H)	486338	453088 (Residential)	33250 (Commercial)	486338
9	Total Sold Carpet Area (Excluding Balcony Area*) (in SQF) relevant to turnover (I)	479099	453088 (Residential)	17306 (Commercial)	470394
10	Relevant ITC [(J)= (C)*(I)/(H)] or [(J)= (D)*(I)/(H)]	11,476,325			28,189,624
	Ratio of ITC Post-GST [(K)=(J)/(G)]	2.04%			3.72%

12. The DGAP has also submitted from the Table-'B' that the ITC as a percentage of the total turnover that was available to the Respondent during the pre-GST period from April, 2016 to June, 2017 was 2.04% and during the post-GST period from July, 2017 to March, 2019, it was 3.72% which clearly confirmed that post-GST, the Respondent has been benefited from additional ITC to the tune of 1.68% [3.72% (-) 2.04%] 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% in view of 1/3rd abatement for land 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 houses upto a carpet area of 60 square metres per house was further reduced from 12% to 8%, vide Notification No. 1/2018-Central Tax (Rate) dated 25.01.2018. In view of the change in the GST rate after 01.07.2017, the issue of profiteering has been examined by the DGAP in two parts i.e. by comparing the applicable tax rates and ITC available in the pre-GST period (April, 2016 to June, 2017) when only VAT@ 4.50% was payable for Residential flats and Commercial shops and Service Tax @ 4.50% on Commercial Shops only with (1) the post-GST period from 01.07.2017 to 24.01.2018, when the effective GST rate was 12% for both residential flats and commercial shops and (2) with the period from 25.01.2018 to 31.03.2019, when the effective GST rate was 12% for commercial shops and 8% for residential flats. Accordingly, on the basis the figures contained in Table- 'B' above, the comparative figures of the ratio of ITC availed/available to the turnover in the pre-GST and the post-GST periods as well as the turnover, the recalibrated base price and the excess realization (profiteering) during the post-GST period, has been tabulated as is given in Table-C below:-



Table-'C'

(Amount in Rs.)

Sr. No.	Particulars	A	Post-GST Period			
			01.07.2017 to 31.03.2019 (Shops)	01.07.2017 to 24.01.2018 (Flats)	25.01.2018 to 31.03.2019 (Flats)	Total
1	Period	A				
2	Output GST rate (%)	B	12	12	8	
3	Ratio of CENVAT credit/ ITC to Total Turnover as per table - 'B' above (%)	C	3.72%	3.72%	3.72%	3.72%
4	Increase in ITC availed post-GST (%)	D= 3.72% less 2.04%	1.68	1.68	1.68	1.68
5	Analysis of Increase in ITC:					
6	Base Price raised during July, 2017 to March, 2019 (Rs.)	E	5,99,93,772	23,27,44,000	46,54,88,000	75,82,25,772
7	GST raised over Base Price (Rs.)	F= E*B	71,99,253	2,79,29,280	3,72,39,040	7,23,67,573
8	Total Demand raised	G=E+F	6,71,93,025	26,06,73,280	50,27,27,040	83,05,93,345
9	Recalibrated Base Price	H= E*(1-D) or 98.32% of E	5,89,85,877	22,88,33,901	45,76,67,802	74,54,87,579
10	GST @12% or 8%	I = H* B	70,78,305	2,74,60,068	3,66,13,424	7,11,51,797
11	Commensurate demand price	J = H+I	6,60,64,182	25,62,93,969	49,42,81,226	81,66,39,376
12	Excess Collection of Demand or Profiteering Amount	K= G-J	11,28,843	43,79,311	84,45,814	1,39,53,968

14. The DGAP has also observed from Table-'C' that the additional ITC of 1.68% 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 ITC was required to be passed on to the recipients.

15. On the basis of the aforesaid CENVAT/ITC 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 from 01.07.2017 to 24.01.2018, the amount of benefit of ITC not passed on or in other words, the profiteered amount has been quantified by the

DGAP as Rs. 43,79,311/- for residential units which included GST @ 12%, on the base profited amount of Rs. 39,10,099/-. Further, the amount of benefit of ITC that needed to be passed on by the Respondent to the home buyers during the period from 25.01.2018 to 31.03.2019 has been computed as Rs. 84,45,814/-which included 8% GST on the base amount of Rs. 78,20,198/-. In respect of the commercial shops sold by the Respondent during the period from 01.07.2017 to 31.12.2018, the benefit of ITC that needed to be passed on by the Respondent to the buyers of the commercial shops has been computed as Rs. 11,28,843/- which included 12% GST on the base amount of Rs. 10,07,895/-. Therefore, the total benefit of ITC that the Respondent was required to pass on during the period from 01.07.2017 to 31.03.2019 in respect of both the residential flats as well as the commercial shops, came to Rs. 1,39,53,968/- which included GST (@ 12% or 8%) on the base amount of Rs. 1,27,38,193/-. The home and commercial shop buyer and unit no. wise break-up of this amount has been given in Annexure-14 of the DGAP's Report. This amount was inclusive of the profiteered amount in respect of the Applicant. It was also observed that the Respondent had supplied the construction services in the State of Haryana only.

16. The DGAP has also stated that the Respondent had submitted that he had passed on the benefit of Rs. 1,21,08,722/- to the home buyers. A summary of category-wise ITC 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 the Table- 'D' below:-

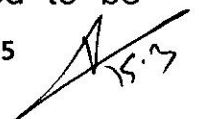


Table-'D'

(Amount in Rs.)

S r. N o.	Category of Customers	No. of Units	Area (in Sq.ft.)	Amount Received Post GST	Profiteering Amt. as per Annex-14	Benefit claimed to have been Passed on by the Noticee	Difference	Remark
A	B	C	D	E	F	G	H=F-G	I
1	Applicant (Residential)	1	487	7,49,250	13,762	12,517	1,245	Further Benefit to be passed on as per Annex-15
2	Other Buyers (Residential)	991	4,52,601	69,74,82,750	12,811,363	1,03,77,154	24,34,209	Further Benefit to be passed on as per Annex-15
	Total Residential(A)	992	453088	69,82,32,000	12,825,125	1,03,89,671		
3	Commercial Shop Buyers	34	7,783	2,52,05,183	4,74,261	14,760	4,59,501	Further Benefit to be pass on as per Annex-16
4	Commercial Shop Buyers	42	9,523	3,47,88,589	6,54,582	16,44,314	-9,89,732	Excess Benefit passed on. List Attached as Annex-17
5	Commercial Shop Buyers	2	682	0	0	59,977	-59,977	No Consideration Paid Post-GST, However, Noticee passed on benefit. List Attached as Annex-17
6	Commercial Shop Buyers	66	15,263	0	0	0	0	No Consideration Paid Post-GST and No benefit passed on.
7	Total Commercial (B)	144	33250	5,99,93,772	11,28,843	17,19,051		
	Grand Total (C)=(A)+(B)	1,136	486338	75,82,25,772	1,39,53,968	1,21,08,722		

17. The DGAP has observed from the Table-'D' that the benefit claimed to have been passed on by the Respondent was less than what he ought to have passed on in the case of 991 residential flats (Sr. 2 of above Table), by an amount of Rs. 24,34,209/- and in case of 34 commercial shops (Sr. 3 of above Table), by an amount of Rs. 4,59,501/-. The details of these amounts have been given in Annexure-15 & 16 of the DGAP's Report. Further, the benefit claimed to have been passed on by the Respondent was higher than what he should have passed on, in respect of 44 commercial shops (Sr. No. 4 & 5 of above Table), by an amount of Rs. 10,49,709/-. The details of this excess benefit claimed to have been passed on have been given in Annexure-17 of the DGAP's Report. However, the DGAP has contended that this excess benefit claimed to have been passed on to some recipients, could not be set off against the additional benefit required to be



passed on to some other recipients as per Annexure-15 & 16 of the DGAP's Report and it could only be adjusted against any future benefit that might accrue to such recipients who had received excess benefit.

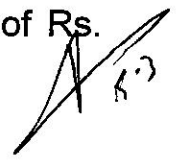
18. The DGAP has further contended that the above computation of profiteering was with respect to 992 home buyers and 78 commercial shop buyers, whereas the Respondent had booked 992 residential units and 78 commercial shops till 31.03.2019. Out of the 78 commercial shops booked till 31.03.2019, in respect of 2 shops, though the booking amount was received in the pre-GST period, no consideration had been received during the post-GST period of 01.07.2017 to 31.03.2019 (period covered by the investigation). Therefore, if the ITC in respect of these 2 commercial shops was considered to calculate the profiteering in respect of 1068 units (992 residential flats + 76 commercial shops) where payments had been received after GST, the ITC as a percentage of turnover would be distorted and erroneous. Therefore, the benefit of ITC in respect of these 2 commercial shops should be calculated when the consideration would be received in the post-GST period by taking into account the proportionate ITC in respect of those 2 commercial shops.
19. The DGAP has also claimed that the benefit of additional ITC of 1.68% of the turnover has, in fact, accrued to the Respondent and the same was required to be passed on to the Applicant and other recipients. The DGAP has stated from the Table-'D' above that the Respondent has not passed on the additional benefit of ITC @1.68% of the Base Price to (i) One flat of Applicant No. 1 mentioned at Sr. No. 1 of Table-

'D' involving amount of Rs. 1245/-. (ii) 991 residential flats mentioned at Sr. No. 2 of Table-'D' involving amount of Rs. 24,34,209/- and (iii) 34 commercial shops mentioned at Sr. No. 3 of Table-'D' involving amount of Rs. 4,59,501/-. The DGAP has further claimed that the benefit claimed to have been passed on by the Respondent to the buyers mentioned in column-G of Table-D had already been factored in the calculations and it was found that Section 171 of the Central Goods and Services Tax Act, 2017 appeared to have been contravened by the Respondent, inasmuch as the additional benefit of ITC @ 1.68% of the base price, i.e. Rs 28,94,955/- received by the Respondent during the period from 01.07.2017 to 31.03.2019, had not been passed on by the Respondent to 1026 recipients (992 buyers of residential flats plus 34 buyers of commercial shops). These recipients were identifiable as per the documents provided by the Respondent, giving the names and addresses along with unit no. allotted to such recipients. Therefore, this additional amount of Rs. 28,94,955/- was required to be returned to such eligible recipients.

20. The DGAP has also stated that the present investigation has covered the period from 01.07.2017 to 31.03.2019. Profiteering, if any, for the period post March, 2019, has not been examined by him, as the exact quantum of ITC that would be available to the Respondent in future could not be determined at the stage, when the construction of the project was yet to be completed. He 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 ITC shall be passed on to the recipient by way of commensurate reduction in prices”, have been contravened by the Respondent in the present case.

21. The above Report was considered by this Authority in its meeting held on 25.09.2019 and it was decided that the Applicants and the Respondent be asked to appear before the Authority on 21.10.2019. The Respondent was issued notice on 26.09.2019 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 Sh. Amit Kumar, husband of the Applicant No. 1, appeared for the Applicant No. 1 and the Respondent was represented by Sh. Suresh Kumar, Company Representative and Sh. Narottam Rawat, CA. None appeared for the Applicant No. 2.
22. During the hearing held on 09.12.2019 the Respondent has filed written submissions dated 09.12.2019 and stated that he agreed with the Report furnished by the DGAP and has also claimed that he has passed on the benefit of ITC to the flat and shop buyers. He was directed to submit the evidence showing that the ITC benefit had actually been passed on by him to all the buyers. In this connection, the Respondent has submitted written submissions dated 09.01.2020 and has also submitted soft copy of the ledger accounts of the buyers to show that he has passed on the benefit of ITC. A copy of the soft copy was supplied to the DGAP and he was directed to verify the claim of the Respondent that he has already passed on an amount of Rs.

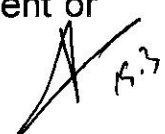


1,21,08,722/- to the flat and shop buyers and submit clarifications under Rule 133 (2A) of the CGST Rules, 2017.

23. The DGAP vide his Report dated 19.02.2020 filed under Rule 133 (2A) has submitted that necessary verification of the data (soft copy) submitted by the Respondent has been done by him. He has also submitted that the copies of the Ledger Accounts have been verified with the list of 992 home buyers submitted by the Respondent during the investigation of this case. He has further submitted that as per the copies of the Ledger Accounts, the Respondent has already passed on the benefit of Rs. 1,03,89,671/- to 992 home buyers. He has also claimed that in respect of 144 commercial shop buyers, the Respondent has submitted copies of Ledger Accounts in respect of 78 commercial shop buyers only. He has further claimed that as per the copies of the Ledger Accounts, the Respondent has passed on the benefit of Rs. 17,19,051/- to these 78 commercial shop buyers. The DGAP has also stated that out of these 78 commercial shop buyers, he has computed profiteering of Rs. 11,28,843/- in respect of 76 commercial shop buyers only as in respect of remaining 2 shop buyers, there was no receipt of any consideration in the post GST period and accordingly no profiteering could be established. He has further stated that out of the 76 commercial shop buyers, the Respondent has passed on benefit of ITC of Rs. 16,44,314/- to the 42 commercial shop buyers which was Rs. 9,89,732/- in excess, to the actual due amount of Rs. 6,54,582/-, as has been illustrated in Table- 'D' under Para 21 of his Report dated 16.09.2019. The DGAP has also

submitted that the final figures of profiteering, the amount of the benefit passed on and the net profiteering thereafter has been explained in Table-'D' of Para 21 of his Report dated 19.09.2019.

24. We have carefully considered all the submissions filed by the Applicants, the Respondent and the other material placed on record and find that the Applicant No. 1 vide her complaint dated 30.11.2018, has alleged that the Respondent was not passing on the benefit of ITC to her in spite of the fact that he was availing ITC on the purchase of the inputs on the higher rates of GST which has resulted in benefit of additional ITC to him and was also charging GST from her @12%. The above complaint was examined by the Standing Committee on Anti-Profitteering in its meeting held on 11.03.2019 and was forwarded to the DGAP for investigation who vide his Report dated 16.09.2019 has found that the ITC as a percentage of the total turnover which was available to the Respondent during the pre-GST period was 2.04% and during the post-GST period this ratio was 3.72% as per the Table-B mentioned above and therefore, the Respondent has benefited from the additional ITC to the tune of 1.68% (3.72% - 2.04%) of the total turnover which he was required to pass on to the flat buyers of this project. The DGAP has also found that the Respondent has not reduced the basic price of his flats by 1.68% due to additional benefit of ITC and by charging GST at the increased rate of 12% on the pre-GST basic price, he has contravened the provisions of Section 171 of the CGST Act, 2017. The DGAP has further submitted that the amount of benefit of ITC which has not been passed on by the Respondent or

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the profiteered amount came to Rs. 28,94,955/- which included 12% or 8% GST on the basic profiteered amount. The DGAP has also intimated that this amount of profiteering also included the profiteered amount of Rs. 1,245/- including 12% or 8% GST in respect of the Applicant No. 1. He has also supplied the details of all the buyers who have purchased flats and shops from the Respondent along with their unit numbers and the profiteered amount vide Annexures 15, 16 and 17 attached with his Report.

25. The claim of the Respondent that he has already passed on the benefit of Rs. 1,21,08,722/- to his customers required verification from the DGAP. Therefore, the Respondent, vide order dated 09.12.2019 was directed to submit evidence showing that the ITC benefit has actually been passed on by him to all the eligible buyers. In response, the Respondent has filed written submissions dated 09.01.2020 and has also supplied a softcopy of the Ledger Accounts of the flat and shop buyers which were supplied to the DGAP. The DGAP was directed to verify the claim of the Respondent that he has already passed on an amount of Rs. 1,21,08,722/- to the home and shop buyers.
26. The DGAP vide his Report dated 19.02.2020 has submitted that the necessary verification of the data (soft copy) submitted by the Respondent has been done by him. He has also submitted that the copies of the Ledger Accounts have been verified by him with the list of 992 home buyers submitted by the Respondent during the investigation of this case. He has claimed that as per the copies of the

Ledger Accounts, the Respondent has already passed on benefit of Rs. 1,03,89,671/- to 992 home buyers. He has also claimed that in respect of 144 commercial shop buyers, the Respondent has submitted the copies of Ledger Accounts in respect of 78 commercial shop buyers only. He has further claimed that as per the copies of the Ledger Accounts, the Respondent has passed on benefit of Rs. 17,19,051/- to these 78 commercial shop buyers. The DGAP has further stated that out of these 78 commercial shop buyers, he has computed profiteering of Rs. 11,28,843/- in respect of 76 commercial shop buyers only as in respect of remaining 2 shop buyers, there was no receipt of consideration in the post GST period and accordingly no profiteering could be established. He has also contended that out of the 76 commercial shop buyers, the Respondent has passed on benefit of ITC of Rs. 16,44,314/- to the 42 commercial shop buyers which was Rs. 9,89,732/- in excess to the actual due amount of Rs. 6,54,582/-.

27. A careful perusal of Table-'B' submitted by the DGAP shows that the Respondent has been given credit of Rs. 43,75,985/- on account of the ITC earned by him on the Value Added Tax (VAT) which he has paid on the purchase of the goods during the period from April, 2016 to June, 2017 while executing the above 'Affordable Housing Project'. However, it has not been mentioned in the Report that the said credit of VAT was in accordance with the provisions of Section 42 (1) and (2) of the Haryana Value Added Tax Act, 2003 and whether the above credit has been allowed to him by the appropriate Assessing Authority

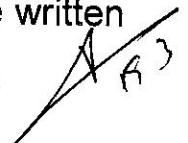
as specified under the Act. No reasons have been given by the DGAP in his Report why the Respondent was eligible to claim the above ITC. It has also not been explained whether the Respondent was discharging his VAT liability as a regular registered dealer or was as a composition dealer. It has also not been stated in the Report whether the Respondent was eligible to charge VAT from the buyers under the Haryana Affordable Policy-2013 and whether he had collected VAT from his buyers or not?

28. Perusal of the supplementary Report dated 19.02.2020 furnished by the DGAP and Table-'D' of his first Report dated 16.09.2019 shows that the Respondent has passed on the benefit of Rs. 1,21,08,722/- to the flat and shop buyers. In this connection it would be pertinent to mention that the DGAP has not verified even a single acknowledgement submitted by the Respondent from the flat or the shop buyers to establish that they have actually received the benefit of GST as has been claimed by the Respondent. The DGAP has also not produced even a single acknowledgement/statement of the buyers obtained/recorded by him to confirm whether the benefit of ITC has been passed on to the buyers or not. In the absence of such acknowledgement/statement the claim of the Respondent that he has passed on the benefit of ITC to his buyers cannot be accepted.
29. Based on the above reasons the Reports dated 16.09.2019 and 19.02.2020 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 upto 29.02.2020 or

till the date of issue of Completion Certificate, whichever is earlier, on the following issues:-

- (i) Whether the Respondent 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?
- (ii) Whether the Respondent was availing benefit of Composition Scheme under the Haryana VAT Act, 2003 or not?
- (iii) Whether the Respondent was eligible to charge VAT from the flat and the shop buyers under the Haryana Affordable Housing Policy-2013?
- (iv) Whether the Respondent has collected VAT from the buyers or not?
- (v) Whether the credit of VAT claimed by the Respondent is in accordance with the provisions of Section 42 of the Haryana VAT Act, 2003?
- (vi) Whether the ITC claimed by the Respondent during the pre GST period has been allowed by the appropriate Assessing Authority as specified under the Haryana Value Added Tax Act, 2003?
- (vii) Whether the Respondent has actually passed on the benefit of ITC which shall be investigated by verifying acknowledgements produced by the Respondent.

30. It is also directed that the above investigation shall be completed within a period of 3 months and a detailed Report shall be submitted under Rule 129 (6) of the above Rules. It is further directed the written



acknowledgements/ statements of at least 20% of the flat and shop buyers shall be submitted by the DGAP certifying that they have received the benefit of ITC from the Respondent. Similarly, 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 February, 2020 shall also be furnished along with the Report. If required the DGAP shall be at liberty to take assistance of the field Tax 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 and notified on 28.03.2018 by this Authority. The respondent is also directed to extend all assistance to the DGAP while during the course of further investigation of the present case.

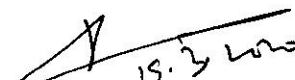
31. A copy each of this order be supplied to both the Applicants and the Respondent. File be consigned after completion.

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

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

Sd/-
(Amand Shah)
Member(Technical)

Certified Copy


(A. K. Goel)
Secretary, NAA

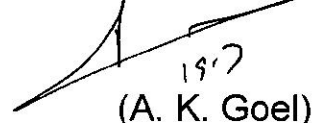
F. No. 22011/NAA/87/Pivotal-2/2019

Date: 19.03.2020

Copy To:-

1. M/s Pivotal Infrastructure Pvt Ltd., 309, 3rd Floor, JMD Pacific Square, Sector -15, Part -II, Gurgaon -122001.

2. Smt. Naina Rani, T4/1204, Taksila Heights, Sector-37C, Opp. Sector-10, Near Basai Chowk, Gurgaon-122001.
3. Director General Anti-Profitteering, Central Board of Indirect Taxes & Customs, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.
4. Guard File.


19/7
(A. K. Goel)
Secretary, NAA

