

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

Case No.	39/2020
Date of Institution	11.12.2019
Date of Order	10.07.2020

In the matter of:

1. Shri Jai Prakash Garg, Flat No. 4, Type V, Sanchar Vihar, P & T Colony, Malviya Nagar, Jaipur- 302017.
2. Director-General of Anti-Profiteering, Indirect Taxes & Customs, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.

**Applicants**

Versus

M/s Adarsh Thought Works Pvt. Ltd., D-123, 2nd Floor Grace Complex, Janpath, Shyam Nagar, Jaipur-302019.

  
**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 Applicants.
2. None for the Respondent.

**ORDER**


1. The Present Report dated 10.12.2019, has been received from the Applicant No. 2 i.e. the Director General of Anti-Profiteering (DGAP), under Rule 129 (6) of the Central Goods & Services Tax (CGST) Rules, 2017 in which it has been stated that an application dated 12.08.2018 was filed before the Rajasthan State Screening Committee on Anti-profiteering under Rule 128 (2) of the CGST Rules, 2017, by the Applicant No. 1 alleging profiteering by the Respondent in respect of purchase of a flat in the project "Sky Terraces" situated at V. T. Road, Mansarovar, Jaipur, from the Respondent. The Applicant No. 1 alleged that the Respondent had not passed on the benefit of ITC by way of commensurate reduction in the price of the flat, on implementation of GST w.e.f. 01.07.2017.



2. The DGAP has submitted that the Rajasthan State Screening Committee on Anti-profiteering has examined the above application in its meeting held on 30.04.2019 and observed that the benefit of ITC had not been passed on by the Respondent and forwarded the said application with its recommendations to the Standing Committee on Anti-profiteering for further action, in terms of Rule 128 (2) of the above Rules.
3. The above application was then considered by the Standing Committee on Anti-profiteering in its meeting held on 13.06.2019 and was recommended to the DGAP for detailed investigation under Rule 129 (1) of the CGST Rules, 2017.
4. The DGAP on receipt of the above reference had issued notice to the Respondent under Rule 129 (3) of the above Rules to submit reply as to whether the ITC benefit was passed on by him to his recipients and if not to suo-moto determine the quantum of benefit which was not passed on and intimate the same to him. The Respondent was also given opportunity to inspect the evidence produced by the above Applicant during the period from 18.07.2019 to 22.07.2019. However, the Respondent did not avail of the said opportunity. Vide e-mail dated 05.11.2019, the Applicant No. 1 was also given an opportunity to inspect the non-confidential documents/reply furnished by the Respondent on 11.11.2019 or 13.11.2019. However, the Applicant did not avail of the said opportunity and expressed his inability to visit and inspect the documents.
5. The present investigation has been conducted by the DGAP for the period from 01.07.2017 to 30.04.2019. The DGAP has also intimated



that in response to the Notice dated 10.07.2019 and further reminders dated 26.07.2019 & 05.08.2019, Shri Mudit Jain of Dhadda & Co., Authorised Representative of the Respondent replied vide letter dated 10.08.2019 and sought an extension of two months to submit the desired document however, subsequently he submitted that he had not been getting any response from the Respondent regarding the proceeding. Vide his letter dated 19.08.2019 he also submitted that due to unavoidable reasons he was withdrawing his authorization for the Respondent and requested that no action against the partners of M/s Dhadda and Co. should be taken in case of any default made by the Respondent.

6. The DGAP has further intimated that as there was no response from the Respondent, Summons under Section 70 of the CGST Act, 2017 read with Rule 132 of the above Rules, were issued to Sh. Rituraj Singh, Director and Sh. Rajat Jain, Manager of the Respondent asking them to appear at DGAP's office and produce the relevant documents. However, they neither appeared nor furnished the desired information. Vide letter dated 06.09.2019 the Respondent replied that Sh. Rituraj Singh was in judicial custody on the orders of the Sessions Court Gurgaon and there was no person named Rajat Jain working with the Respondent. The DGAP had issued another Summons to Sh. Damyanti Bhandari, Director and Sh. Satish Kadmavat of the Respondent, asking them to appear at the DGAP's office and produce the relevant documents. However, they neither appeared nor furnished the desired information.
7. The DGAP has also reported that he had written letter dated 30.08.2019 and reminder dated 11.09.2019 to the jurisdictional Assistant/ Deputy 

Commissioner, CGST, Div-1 and Additional Commissioner of State Commercial Taxes/ SGST requesting them to depute an officer to collect the requisite documents from the Respondent and forward the same to the DGAP for further investigation. In response to the aforesaid letter dated 11.09.2019, Additional Commissioner, State Tax had informed vide his letter dated 23.09.2019 that he had deputed Sh. Bharat Bhushan Badesra, Commercial Tax Officer, Jaipur III, Special XI. Vide letter dated 04.10.2019, Additional Commissioner (Tax Evasion), office of the Principal Commissioner, CGST & C. Ex. Commissionerate, Jaipur informed that a visit was made by the Superintendent and Inspector of CGST & C. Ex. (A. E.) on the Respondent's premises on 26.09.2019 and no one was found present except Sh. Pankaj Sharma (Group D Employee). It was also stated that all the Directors of the Respondent had already been arrested by the SOG (Special Operations Group), Rajasthan Police. The Additional Commissioner (Tax Evasion) requested that as the Respondent fell under the State jurisdiction, any further communication should be made directly with the State Commercial Taxes Department.

8. The DGAP has further reported that after exhausting all the options to collect the desired documents/information it was decided to depute a team of officers from the office of the DGAP to visit the premises of the Respondent to collect the requisite documents/ records/ information. Accordingly, letter dated 16.10.2019 was written to the jurisdictional Assistant Commissioner, CGST, Div-1 and Commercial Tax Officer, Jaipur III, Special XI of State Commercial Taxes/ SGST requesting to



depute an officer to assist the team of DGAP during their visit to the premises of the Respondent.

9. He has also stated that the team of the DGAP office had visited the premises of the Respondent on 21.10.2019 along with the deputed officers of the CGST and SGST. During the visit, all the requisite documents/information was collected from the Respondent and a statement of facts was signed by the staff present at the premises of the Respondent. Vide the aforesaid statement, the staff of the Respondent had submitted the followings:-

(a) That the Respondent was registered under the Goods and Service Tax vide Registration No. 08AAHCA1799N2ZT and was engaged in development and construction of residential and commercial complexes and was running only one project "Sky Terraces" which was started on 07.06.2013. The Respondent had started giving possession of the flats constructed in the above project to the customers in the year 2018. There were 252 residential flats and 24 commercial shops in the said project out of which 215 units had been sold and approx. 60 to 70 families were living in the above project. The project had been completed about March, 2018 and the Respondent had applied for the completion certificate which had not been received yet.

(b) That in the pre-GST regime the Respondent was discharging 1% VAT under the composition scheme and post-GST he was discharging GST @ 12%. Further, he was maintaining books of

accounts by electronic means in the tally software.

10. The DGAP has also submitted that during the visit of the Respondent's premises, the following documents/ information was collected:-

- a. Tally data of the project "Sky Terraces".
- b. List of customers in the Project "Sky Terraces".
- c. Copies of GSTR-1 Returns for the period from April, 2018 to February, 2019.
- d. Copies of GSTR-3B Returns for the period from July, 2017 to April, 2019.
- e. Copies of VAT Returns for the period from April, 2016 to June, 2017.
- f. Brochure of the project "Sky Terraces".
- g. Sample Sale invoices.
- h. Copies of documents issued in the name of the Applicant.
- i. Other details pertaining to the project "Sky Terraces" available in the soft copies like clearance certificates.
- j. Copies of ST-3 Returns for the period from April, 2016 to June, 2017.
- k. Copy of the Bank statement for the period from 01.04.2018 to 31.05.2019.
- l. Copies of RERA documents.

11. The DGAP in his Report has also submitted that according to the Sale agreement dated 05.05.2014, demand letters and payment recipients collected during the course of the visit, it was observed that the Applicant No. 1 had purchased Flat no. B-1806, measuring 1989 square feet, at total basic sale price of Rs. 66,44,700/- (Rs. 3,200/- basic sale price per square feet, Rs. 99,450/- for Electrification Charges, Rs. 99,450/- for Lease Money, Rs. 50,000/- for corpus fund and Rs. 31,000/- for Copper Wiring). The details of amounts and taxes paid by the Applicant No. 1 to the Respondent have been furnished by the DGAP as per the Table-'A' below:-

Table-'A'

(Amount in Rs.)

S. No.	Payment Stage	Due Date	Basic %	BSP	Electricity Charges	Lease Money, Corpus Fund and Copper Wiring Charges	Service Tax	V A T	GST	Total
1	Booking Amount	05.05.2014	11.43%	7,27,520			22,480			7,50,000
2	On Roof casting									
3	On Roof Casting of Upper Basement									
4	On Roof Casting of 1st Floor	15.06.2014	13.63%	8,67,270		99,450	26,799	0	0	9,93,519
5	On Roof Casting of 4 <sup>th</sup> Floor	15.06.2014	13.63%	8,67,270			26,799	0	0	8,94,069
6	On Roof Casting of 8 <sup>th</sup> Floor	15.06.2014	13.63%	8,67,270			26,799	0	0	8,94,069
7	On Roof Casting of 12 <sup>th</sup> Floor	01.08.2014	13.63%	8,67,270	99,450		39,091	0	0	10,05,811
8	On Roof Casting of 17 <sup>th</sup> Floor	10.04.2015	13.63%	8,67,270			39,027	0	0	9,06,297



9	On Roof Casting of Final Slab	15.03.2017	13.63%	8,59,179			38,663	0	0	8,97,842
		31.03.2018		8,091					971	9062
10	On Final Possession	Not yet Due	6.81%	4,33,660		81,000	0	0	52,039	5,66,699
		<b>T o t a l</b>	<b>100.00%</b>	<b>63,64,800</b>	<b>99,450</b>	<b>1,80,450</b>	<b>2,19,658</b>	<b>0</b>	<b>53,010</b>	<b>69,17,368</b>

12. The DGAP has further submitted that para 5 of Schedule-III of the CGST 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". He has also intimated that clause (b) of Paragraph 5 of Schedule II of the CGST 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, he has further intimated that the ITC pertaining to the residential units which were under construction but not sold was provisional which might be required to be reversed by the Respondent as per the provisions of Section 17 (2) & Section 17 (3) of the CGST 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".*

13. Therefore, the DGAP has stated that the ITC pertaining to the unsold units was not taken in to account by him during the present investigation and the Respondent was required to re-fix the selling prices of such units by considering the net benefit of additional ITC which would be available to him post-GST.
14. The DGAP has also informed that as the Respondent had not submitted any details/information, he has put his best efforts to collect and arrange the information to initiate and conclude the proceedings. Though the period of investigation was from 01.07.2017 to 30.06.2019, however, the Respondent had filed GSTR-3B Returns upto April, 2019 only, therefore, the investigation was limited to April, 2019. Further, he has complied the list of home buyers from the tally software and reconciled it with the statutory returns.
15. The DGAP has also claimed that prior to 01.07.2017 i.e. before the GST was introduced, the Respondent was eligible to avail credit of



Service Tax paid on input services only (no credit was available in respect of Central Excise Duty paid on the inputs) and ITC of VAT paid on inputs was not available to the Respondent. Post-GST, the Respondent could avail ITC of GST paid on all the inputs and the input services including the sub-contracts. From the information collected from the Respondent for the period from April, 2016 to April, 2019, the details of the ITC availed by him, his turnover from the impugned project "Sky Terraces", the ratios of ITC to the turnovers, during the pre-GST (April, 2016 to June, 2017) and post-GST (July, 2017 to April, 2019) periods, have been furnished by the DGAP as per the Table-'B' below:-

**Table-'B'**

(Amount in Rs.)

S. No.	Particulars	Pre-GST (April, 2016 to June, 2017)	Post-GST (July, 2017 to April, 2019)	Remark
1	CENVAT of Service Tax Paid on Input Services (A)	71,19,769	-	As per ST-3 filed.
2	ITC of VAT Paid on Purchase of Inputs (B)	-	-	No ITC due to Composition Scheme
3	ITC of GST Availed (C)	-	2,99,10,259	As per GSTR-3B filed.
4	Total CENVAT/ITC Available (D)= (A+B) or (C)	71,19,769	2,99,10,259	
5	Turnover for Residential Flats & Commercial Shops as per Home Buyers List (E)	22,86,10,561	28,25,98,087	Turnover reconciled with ST-3 & GSTR-3B
6	Total Saleable Super Built-up Area (in SQF) (F)	5,68,285	5,68,285	As per Project Brochure, other clearance documents & List of Home Buyers
7	Total Sold Super Built-up Area (in SQF) relevant to turnover (G)	256814	364437	As per List of Home Buyers
8	Relevant ITC [(H)= (D)*(G)/(F)]	32,17,499	1,91,81,230	
	<b>Ratio of ITC Post-GST [(I)=(H)/(E)]</b>	<b>1.41%</b>	<b>6.79%</b>	



16. Therefore, the DGAP has claimed that it was established from the above Table that the ITC as a percentage of the turnover that was available to the Respondent during the pre-GST period (April, 2016 to June, 2017) was 1.41% and during the post-GST period (July, 2017 to April, 2019), it was 6.79% which showed that post-GST, the Respondent has benefited from additional ITC to the extent of 5.38% [6.79% (-) 1.41%] of the taxable turnover.
17. Based on the above factors the DGAP has computed the profiteered amount by comparing the applicable tax and the ITC available in the pre-GST period (April, 2016 to June, 2017) when Service Tax @4.5% and VAT@1% were payable (total tax rate of 5.50% approx.) with the post-GST period (July, 2017 to April, 2019) when the effective GST rate was 12% (GST @18% along with 1/3rd abatement for land value) on construction service, vide Notification No.11/2017-Central Tax (Rate), dated 28.06.2017. The comparative computation of the ITC availed/available during the pre-GST period and the post-GST period and the profiteered amount has been tabulated by the DGAP in the Table-'C' below:-

**Table-'C'**

(Amount in Rs.)

S. No.	Particulars		Post-GST
1	Period	A	July, 2017 to April, 2019
2	Output GST rate (%)	B	12%
3	Ratio of CENVAT credit/ ITC to Total Turnover as per Table - 'B' above (%)	C	6.79%
4	Increase in ITC availed post-GST (%)	D= 6.79% less 1.41%	5.38%
5	<b><u>Analysis of Increase in ITC:</u></b>		
6	Base Price raised/collected during July, 2017 to April, 2019 (Rs.)	E	28,25,98,087
7	GST raised/collected over Base Price (Rs.)	F= E*B	3,39,11,770

8	Total Demand raised/collected	$G=E+F$	31,65,09,857
9	Recalibrated Base Price	$H= E*(1-D)$ or 94.62% of E	26,73,94,310
10	GST @12%	$I = H * B$	3,20,87,317
11	Commensurate demand price	$J = H+I$	29,94,81,627
12	<b>Excess Collection of Demand or Profiteering Amount</b>	$K= G-J$	<b>1,70,28,230</b>

18. The DGAP has also submitted that it was apparent from Table-'C' given above that the additional ITC of 5.38% of the taxable turnover should have resulted in commensurate reduction in the base prices as well as cum-tax prices of the flats the benefit of which as per the provisions of Section 171 of the CGST Act, 2017, was required to be passed on to the recipients/flat buyers by the Respondent.
19. The DGAP has accordingly calculated the amount of benefit of ITC which was required to be passed on by the Respondent to each flat buyer including the above Applicant or the profiteered amount as per **Annexure-25** of his Report as **Rs. 1,70,28,230/-** which included 12% GST on the base profiteered amount of Rs. 1,52,03,777/-. This amount includes an amount of Rs. 488/- including the GST on the base amount of Rs. 435/- which has been profiteered by the Respondent from the Applicant No. 1. Thus, the DGAP has claimed that the Respondent has contravened the provisions of Section 171 of the CGST Act, 2017 in as much as the additional benefit of ITC @5.38% of the base prices received by the Respondent during the period between 01.07.2017 to 30.04.2019, has not been passed on to the above Applicant and other recipients by him.
20. The DGAP has also averred that the computation of profiteering in the present investigation was only with respect to 177 home buyers (Applicant No. 1 + 176 other buyers) whereas the Respondent had



booked 217 units till 30.04.2019, 40 customers who had booked the flats and also paid the booking amounts in the pre-GST period, had not paid any consideration during the post-GST period from 01.07.2017 to 30.04.2019 (period under investigation). Therefore, if the ITC in respect of these 40 units was considered to calculate profiteering in respect of 177 units where payments had been received after GST implementation, the ITC as a percentage of turnover may be erroneous. Therefore, the benefit of ITC in respect of these 40 units may be calculated when the consideration was received from such units by taking into account the proportionate ITC in respect of such units.

21. He has further averred that profiteering, if any, for the period post April, 2019, has not been computed by him as the exact quantum of ITC which would be available to the Respondent in future could not be determined at this stage. It has also been observed by the DGAP that the Respondent has supplied construction services in the State of Rajasthan only.
22. The above Report was considered by this Authority in its sitting held on 12.12.2019 and it was decided to hear the Applicants and the Respondent on 08.01.2020. The Respondent was also directed to explain why the Report dated 10.12.2019 filed by the DGAP should not be accepted and his liability for violation of the provisions of Section 171 of the above Act should not be fixed. As the notice of hearing was returned undelivered another notice was issued to the Respondent through Commissioner CGST/SGST Jaipur to appear on 30.01.2020 before this Authority. The Additional Commissioner (AE), CGST Jaipur





vide letter dated 28.01.2020 informed that he had visited the premises of the Respondent on 17.01.2020 which were found to be locked and therefore proceedings for pasting of the Notice and other documents under Section 169 of CGST Act, 2017 at a prominent place on the premises of the Respondent was carried out and a panchnama was drawn on the spot in the presence of the witnesses. Further, vide order dated 30.01.2020 the Commissioners CGST/SGST were directed to serve the notice of hearing through Jail Superintendent Jaipur as it was learnt that the Directors of the Respondent had been arrested by the Special Operations Group, Jaipur. Accordingly, the Directors of the Respondent were served through the Jail Superintendent Jaipur on 14.02.2020. Since, the notice, Report of the DGAP and the Annexure have been duly pasted on the premises of the Respondent on 17.01.2020 in terms of Section 169 of the CGST Act, 2017 as well as the Directors of the Respondent have also been served through the Jail Superintended Jaipur on 14.02.2020 and the Respondent has not appeared or filed any submissions inspite of repeated opportunities he was proceeded against ex-parte vide order dated 11.03.2020.

23. We have carefully considered the Report filed by the DGAP, submissions of the Applicant No. 1 and the other material placed on record and find that a complaint dated 12.08.2018 was preferred before the Rajasthan State Screening Committee on Anti- Profiteering by the Applicant No. 1, alleging profiteering against the Respondent in respect of purchase of a flat in the Respondent's project "Sky Terraces", located at V. T. Road, Mansarovar, Jaipur. The above complaint mentioned that the Respondent had not passed on the

benefit of ITC which had become available to him, by reducing the price of the flat commensurately, after coming in to force of the GST w.e.f. 01.07.2017. After preliminary consideration in its meeting held on 30.04.2019 the complaint was forwarded by the Screening Committee to the Standing Committee on Anti-profiteering on 21.05.2019. The above complaint was considered by the Standing Committee on Anti-profiteering in its meeting held on 13.06.2019 and was referred to the DGAP for detailed investigation under Rule 129 (1) of the CGST Rules, 2017.

24. Accordingly, the DGAP has collected the record and after its examination he has furnished his Report dated 10.12.2019. It is evident from Table-B mentioned above that the ratio of ITC as a percentage of the total turnover which was available to the Respondent during the pre-GST period from April, 2016 to June, 2017 was 1.41% and during the post-GST period w.e.f. July, 2017 to April, 2019 it was 6.79% which showed that post-GST, the Respondent has benefited from additional ITC to the extent of 5.38% [6.79% (-) 1.41%] of the taxable turnover. It is also apparent from Table-C supra that the additional ITC of 5.38% of the taxable turnover should have resulted in commensurate reduction in the base prices as well as cum-tax prices of the flats the benefit of which as per the provisions of Section 171 of the CGST Act, 2017, is required to be passed on to the recipients/flat buyers by the Respondent. Both the above Tables have been prepared by the DGAP on the basis of the Returns and the details of flat buyers submitted by the Respondent himself or from the documents collected from his office which have been duly verified by the DGAP. The



mathematical methodology employed by the DGAP to compute the benefit of additional ITC which is required to be passed on by the Respondent to his buyers is appropriate, logical, reasonable and in consonance with the provisions of Section 171 (1) of the CGST Act, 2017 hence, the same can be relied upon. The above mathematical methodology has also been carefully considered and approved by this Authority in all such cases where benefit of additional ITC is required to be passed on.

25. Based on the CENVAT/ITC availability in the pre and post GST periods and the details of the amount collected by the Respondent from the flat buyers during the period from 01.07.2017 to 30.04.2019 the amount of benefit of ITC or the profiteered amount has been computed as **Rs. 1,70,28,230/-** which includes GST @12% on the base profiteered amount of Rs. 1,52,03,777/-. The home buyer and unit no. wise break up of the profiteered amount has been given in **Annexure-25** by the DGAP. This amount is inclusive of an amount of Rs. 488/- including the GST @12% on the base profiteered amount of Rs. 435/- which is the benefit of ITC due to the Applicant No. 1 as has been mentioned at Sr. No. 171 of Annexure-25.
26. Vide his submissions dated 25.01.2020 and 25.03.2020 the Applicant No. 1 has Submitted that the details of payment made to the Respondent against purchase of Flat No B-1806 were different from the details of payment as has been shown in Table-A of the DGAP's Report dated 10.12.2019. He has also submitted that Copper Wiring charges shown in the Report as Rs. 31,000/- were not part of the Sale Agreement. He has further submitted that the statement of the DGAP



contained in para-16 (a) of the Report that project stood completed and the Respondent had applied for the completion certificate was not true as a number of facilities committed as per the agreement and brochure had still not been provided. He also requested to exempt him from personal hearing in view of Corona Virus Pandemic. In this connection it would be pertinent to mention that perusal of the details of the payment furnished by the Applicant No. 1 through his above submissions and the details submitted by the DGAP vide Table-A of his Report shows that the DGAP has prepared the details of the payment as per the Sale Agreement dated 05.05.2014 executed by the Respondent with the above Applicant whereas the Applicant has prepared it on the basis of the actual payment made by him and therefore, there is bound to be difference in the two. Even if the Copper Wiring Charges of Rs. 31,000/- are not part of the sale agreement they are not going to make difference in the ITC benefit of the above Applicant as the DGAP has computed the profiteered amount on the basis of the payments made by Applicant as has been shown in Annexure-25. Therefore, there would be no impact on the entitlement of the above Respondent on account of ITC benefit.

27. The above Applicant has also submitted that as per 16 (a) of the Report the DGAP has stated that the Respondent has applied for the completion certificate however, a number of facilities as per the agreement and brochure were still required to be provided. In this regard it is mentioned that provision of facilities is not covered under the anti-profiteering measures provided in the CGST Act and the Rules and hence, the above issue cannot be resolved by this Authority. The



Applicant may approach the competent forum to get his complaint addressed.

28. Based on the above facts the amount of benefit of ITC which was required to be passed on by the Respondent or the profiteered amount is determined as **Rs. 1,70,28,230/-** including the GST @12% on the basic profiteered amount of Rs. 1,52,03,777/- as has been mentioned in **Annexure-25** of the Report dated 10.12.2019, in terms of Rule 133 (1) of the above Rules. This amount includes an amount of **Rs. 488/-** including GST @12% on the base amount of Rs. 435/- which has been profiteered by the Respondent from the Applicant No. 1. The Respondent has also realized an additional amount of **Rs. 1,70,27,742/-** which includes both the profiteered amount @5.38% of the taxable amount (base price) and GST on the said profiteered amount from the other 176 flat buyers who were not party in the present proceedings. These recipients/flat buyers are identifiable as per the list of home buyers prepared by the DGAP, in which their names and addresses along with unit nos. allotted to such recipients have been duly mentioned and hence this amount of Rs. 1,70,27,742- is required to be refunded to them as well as to the Applicant No. 1. The above amount shall be refunded by the Respondent to the above flat buyers along with interest @18% per annum from the dates from which the above amount was collected by him from the buyers till the payment is made as per the provisions of Rule 133 (3) (b) of the above Rules. The above refund of benefit of ITC shall be made within a period of 3 months from the date of this order failing which the same shall be recovered by the Commissioner SGST and paid to the eligible



house buyers. A report in compliance of this order shall be furnished by the Commissioner SGST to this Authority through the DGAP within a period of 4 months from the date of this Order. The Respondent is also directed to reduce the prices of his flats commensurately as per the details mentioned above in terms of Rule 133 (3) (a) of the above Rules.

29. It is also clear from the facts of the case that the Respondent has been directed to pass on the benefit of ITC till 30.04.2019 as data only till April, 2019 was available. Any benefit of ITC which may become available to the Respondent post 30.04.2019 would also be passed on by the Respondent to the eligible buyers. The State Commissioner GST shall ensure that the above benefit is passed on to the eligible buyers and a report is submitted to this Authority through the DGAP within a period of 4 months from the date of this order.
30. It is also evident from the above narration of facts that the Respondent has denied the benefit of ITC to the buyers of the flats being constructed by him in his Project 'Sky Terraces' in contravention of the provisions of Section 171 (1) of the CGST Act, 2017. Therefore, he is apparently liable for imposition of penalty as per the provisions of Section 171 (3A) read with Rule 133 (3) (d) of the CGST Act, 2017. Therefore, notice be issued to him to explain why penalty should not be imposed on him.
31. As per the provisions of Rule 133 (1) of the CGST Rules, 2017 this order was to be passed on or before 10.06.2020 as the investigation Report was received from the DGAP on 11.12.2019. However, due to the COVID-19 pandemic prevailing in the Country the order could not





be passed on or before the above date. Hence, the same is being passed today in terms of the Notification No. 55/2020-Central Tax dated 27.06.2020 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.

32. A copy each of this order be supplied to both the Applicants, the Respondent, Commissioner SGST Rajasthan as well as the Principal Secretary (Town & Planning), Government of Rajasthan for necessary action. File be consigned after completion.



Certified copy

(A. K. Goel)  
Secretary, NAA

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

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

Sd/-  
(Amand Shah)  
Technical Member

File No. 22011/NAA/101/ATW/2019

Dated: 10.07.2020

Copy To:-

1. M/s Adarsh Thought Works Pvt. Ltd D-123, 2nd Floor Grace Complex, Janpath, Shyam Nagar, Jaipur - 302019
2. Shri Jai Prakash Garg, B1806 sky terrace, Mansarovar, jaipur 302020
3. Directorate General of Anti-Profiteering, New Delhi-110001.
4. Commissioner, Central GST & Customs, Jaipur, NCR Building, Statue Circle, Jaipur-302005

5. Commissioner, Commercial Tax, Kar Bhawan, Bhawani Singh Road, Ambedkar Circle, C-Scheme, Jaipur, Rajasthan 302005

6. Town and Country planning Department, D, A. Building, Jawahar Lal Nehru Marg, near J, opp. to Birla Mandir, Rambagh, Jaipur, Rajasthan 302015.

7. Guard File.

 107



