

BEFORE THE NATIONAL ANTI-PROFITEERING AUTHORITY

UNDER THE CENTRAL GOODS & SERVICES TAX ACT, 2017

Case No. : 41 /2022
Date of Institution : 31.12.2020
Date of Order : 21.07.2022

In the matter of:

1. Shri Atul Waichal, A-7/1, Indrayudh GHS Ltd., MG Road, Goregaon (W), Mumbai.
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 Wadhwa Realty Pvt. Ltd. 301, 3rd Floor Platina, Plot No. C-59, G Block Bandra Kurla Complex, Bandra East, Mumbai-400098.

Respondent

Quorum:-

1. Sh. Amand Shah, Technical Member and Acting Chairman
2. Sh. Pramod Kumar Singh, Technical Member
3. Sh. Hitesh Shah, Technical Member

Present: -

1. None for the Applicant No 1.
2. Sh Archit Agarwal, Chartered Accountant, for Respondent.
3. Ms Surekha Mahadik, AGM, M/s. Wadhwa Realty Pvt. Ltd.



ORDER

1. The present Report dated 31.12.2020 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 the Applicant No. 1 had filed an application (originally examined by the Maharashtra State Screening Committee on Anti-Profiteering) under Rule 128 (1) of the CGST Rules, 2017 against the Respondent alleging profiteering in respect of construction service supplied by him. The Applicant No. 1 had stated that he

had purchased a flat No. F-1603, Tower-F in the Respondent's project "Anmol Fortune", Goregaon and had alleged that the Respondent had not passed on the benefit of Input Tax Credit (ITC) to him by way of commensurate reduction in the prices.

2. The DGAP in its report dated 31.12.2020, inter-alia, has stated that:-

- a) The Standing Committee on Anti-profiteering examined the application filed by the Applicant No. 1 in its meeting held on 13.09.2019 and the minute of which were received in DGAP on 09.10.2019, whereby it was decided to forward the same to the DGAP to conduct a detailed investigation in the matter. Accordingly, investigation was initiated to collect evidence necessary to determine whether the benefit of Input Tax Credit had been passed on by the Respondent to the Applicant No. 1 in respect of construction service supplied by him (Respondent).
- b) The Applicant No. 1 has submitted the following documents along with his application:-
 - i. Duly filled in form APAF -1
 - ii. Copy of the demand letter.
 - iii. Copies of the Agreement to sell and Agreement to construction
 - iv. Summary of Agreement to sell and Agreement to Construction.
 - v. Summary of the details of the Taxes.
- c) After receipt of the reference from the Standing Committee on Anti-profiteering, a Notice under Rule 129 of the Rules was issued by the DGAP on 23.10.2019, calling upon the Respondent to reply as to whether he admitted that the benefit of ITC had not been passed on to his Recipients of services by way of commensurate reduction in prices of the flats and if so, to *suo moto* determine the quantum thereof and indicate the same in his reply to the notice as well as furnish all documents in support of his reply. The Respondent was also allowed to inspect the relied upon non-confidential evidence/information which formed the basis of the investigation between 30.10.2019 and 31.10.2019. The Respondent had availed the said opportunity and inspected the said documents on 19.11.2019. The Applicant No. 1 was also given opportunity to inspect

the non-confidential documents/reply furnished by the Respondent between 26.03.2020 and 27.03.2020, which was not availed by the Applicant No. 1.

- d) The time limit to complete the investigation was 08.04.2020. However, in terms of Notification No. 35/2020 –Central Tax dated 03.04.2020 as amended vide Notification No. 91/2020 – Central Tax dated 14.12.2020, issued by the Central Board of Indirect Taxes and Customs under Section 168 (A) of the Central Goods and Services Tax Act, 2017, where, any time limit for completion or compliance of any action, which fell during the period from the 20th day of March, 2020 to the 30th day of March, 2021, and where completion or compliance of such action had not been made within such time, then the time limit for completion or compliance of such action, would be extended upto the 31st day of March, 2021, including for the purpose for furnishing of any report under the provision of the CGST Act, 2017.
- e) The period covered by the current investigation was from 01.07.2017 to 30.09.2019.
- f) In response to the notice dated 23.10.2019 and subsequent reminders dated 07.11.2019 & 10.01.2020, 07.02.2020, 03.03.2020, 06.03.2020 and 04.06.2020, the Respondent had submitted his replies vide letters and e-mails dated 31.10.2019, 19.11.2019, 20.01.2020, 05.02.2020, 13.02.2020, 04.03.2020, 05.03.2020, 06.03.2020, 12.03.2020, 16.03.2020, 18.03.2020, 13.06.2020, 17.07.2020, 24.07.2020, 27.07.2020, 29.07.2020, 31.07.2020, 04.08.2020, 05.08.2020, 07.08.2020, 08.08.2020, 11.08.2020, 21.08.2020 and 31.08.2020. The detailed submissions of the Respondent to the DGAP have been summed up below wherein, inter-alia, it was stated that:-
- i. that they were engaged in construction of residential properties and they had taken three project named as “**Anmol fortune I (Tower-C)**”, “**Anmol Fortune II (Tower-F)**” and **Anmol Fortune III (Tower-E)**” in 2004 situated at M G Road, Unnat Nagar No.1, Goregaon West, Mumbai. Each tower was considered as a different project in RERA. The “Anmol Fortune-I was completed in Pre-GST

and Pre-RERA Period and hence the same was not registered under RERA. They had taken the Separate RERA registration for the Project “Anmol Fortune-II” and Anmol Fortune-III”. The Projects details was given as under:-

Project Name	Tower Name	Launch Date	Completion Date	Date of OC
Anmol Fortune -I	C	23.02.2006	05.10.2016	05.10.2016
Anmol Fortune -II	F	08.02.2014	05.11.2018	05.11.2018
Anmol Fortune -III	E	09.06.2014	In Progress	Not received

- ii. That the Flat sold to the applicant i.e Mr. Atul Waichal was in F-Tower/Wing of the project “Anmol Fortune-II” and the occupation certificate for the same was received on 05.11.2018. The present investigation needs to be restricted to the Anmol Fortune –II only, since every tower was separately registered under RERA and thus making the same as different project. As per the provisions of Rule 133(5) of the CGST Rules, 2017 National Anti-Profiteering Authority (NAA) has powers to ask the DGAP to investigate into the other projects of the company.
 - iii. The Respondent vide letter dated 18.08.2020, stated that with respect to the customers who have booked flat on or after 01/07/2017, they have arrived at the negotiated sale price after considering the GST credit benefit. The same was also mentioned in the cost sheet issued to each customer and it was accepted and duly signed by the customer and referred to note No. 12 below the cost sheet which was mentioned specifically. The agreements were executed subsequent to accepting the cost sheet and payment of initial booking amount.
- g) Vide the aforementioned letters/e-mails, the Respondent had submitted the following documents/information:
- i. Copies of GSTR-1 returns for the period July, 2017 to September, 2019.
 - ii. Copies of GSTR-3B returns for the period July, 2017 to September, 2019.
 - iii. Copies of Tran-1 returns for transitional credit.

- iv. Copies of VAT & ST-3 returns for the period April, 2016 to June, 2017
 - v. Copies of all demand letters, Sale Agreement/Contract issued to the Applicants.
 - vi. Tax rates - pre-GST and post-GST.
 - vii. Copy of Balance Sheet (including all Annexures and profit/loss account) for FY 2016-17 & FY 2017-18.
 - viii. Copy of Electronic Credit Ledger for the period July, 2017 to September, 2019.
 - ix. CENVAT/Input Tax Credit register for the period April, 2016 to June, 2017
 - x. Details of turnover, output tax liability, GST payable and input tax credit availed.
 - xi. Copy of Project report submitted to RERA.
 - xii. List of home buyers in the project "Anmol Fortune-II".
 - xiii. RERA registrations for all projects.
 - xiv. Project-wise input tax register.
 - xv. Copies of Credit Vouchers, Sample Ledgers, Communication letters to the customers (sample basis), List of customers and Acknowledgements (sample basis) against the passing of the benefit of ITC to customers as the documentary evidences.
- h) All the details/ information submitted by the Respondent was to be treated as confidential in terms of Rule 130 of the Central Goods and Services Tax Rules, 2017.
- i) The subject Application, various replies of the Respondent and the documents/ evidences on record had been carefully examined. The main issues for determination were:-
- i. Whether there was benefit of reduction in Rate of tax or ITC on the supply of Construction Service by the Respondent after implementation of GST w.e.f. 01.07.2017 and if so,
 - ii. Whether the Respondent passed on such benefit to the Recipients by way of commensurate reduction in price, in terms of Section 171 of the CGST Act, 2017.

j) Upon scrutiny of the documents submitted by the Respondent, it was observed that:-

- i. The Respondent vide their letter dated 18.08.2020 claimed that they had arrived at the negotiated sale price after considering the GST credit benefit in respect of units booked/sold after 01.07.2017. However, it is observed on perusal of Cost Sheet and Agreement for sale that in the Agreement nowhere it has been mentioned that the benefit of ITC of GST had been considered while arriving at total sale value. Moreover, the total value of the unit/flat as per Cost Sheet and Agreement for Sale was equal. Furthermore, as per Note 18 of Cost Sheet submitted by the Respondent, it was clearly mentioned as "The information in that paper was issued in good faith; it may or may not constitute part of the contract". The Respondent vide their reply dated 24.07.2020 has also claimed that they had passed on substantial amount of Rs. 58,65,423/- as the benefit of GST Input Tax Credit to the 117 customers in accordance with the requirements of Section 171 of CGST Act, 2017. This includes homebuyers who have booked units after 01.07.2017. Hence, on one hand, the Respondent has claimed that in respect of such units they have arrived at the negotiated sale price after considering the GST credit benefit, but on the other hand, they have also passed on the benefit of ITC to such homebuyers, which was contradictory. Therefore, the claim of the Respondent that they had already adjusted the benefit of ITC of GST at the time of agreement appears to be incorrect and hence, same was not considered for computation of profiteering.
- ii. The Respondent, vide letter dated 19.11.2019, submitted a copy of agreement to sell dated 28.07.2015, an agreement to build and demand letters for the sale of flat no. F-1603, measuring 1,400 square feet, at the basic sale price of Rs. 20,320/- per square feet. The details of amounts and taxes paid by the Applicant to the Respondent were furnished in Table-'A' below.

Table-'A'**(Amount in Rs)**

S. No.	Payment Stages	Due Date	BSP	Other Charges	Service Tax	GST	Total
1	Being the earnest money which has been paid	29.06.2015	5,00,000	-	21,000	-	5,21,000
1b	Within 30 days from the date of booking	15.08.2015	1,10,92,000	-	4,65,864	-	1,15,57,864
2	On Completion of 1st Floor Slab	14.01.2016	12,88,000	-	56,028	-	13,44,028
3	On Completion of 9th Floor Slab	18.07.2016	12,88,000	-	57,960	-	13,45,960
4	On Completion of 13th Floor Slab	06.10.2016	12,88,000	-	57,960	-	13,45,960
5	On Completion of 17th Floor Slab	22.12.2016	12,88,000	-	57,960	-	13,45,960
6	On Completion of 21st Floor Slab	27.07.2017	12,88,000	-	-	1,54,560	14,42,560
7	On Completion of 24th Floor Slab	17.08.2017	12,88,000	-	-	1,54,560	14,42,560
8	On Completion of Terrace Floor Slab	14.11.2017	12,88,000	-	-	1,54,560	14,42,560
9	On Completion of Internal Flooring & Walls	14.10.2017	12,88,000	-	-	1,54,560	14,42,560
10	On Completion of Electrical Work & Internal Painting	15.07.2018	12,88,000	-	-	1,54,560	14,42,560
11	On Possession	16.11.2018	52,64,000	6,47,000	-	7,48,140	66,59,140
Total			2,84,48,000	6,47,000	7,16,772	15,20,940	3,13,32,712

iii. According to 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) which reads as "Sale of land and, subject to clause (b) of paragraph 5 of Schedule, sale of building". Further, 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 his first occupation, whichever was earlier". Thus, the ITC pertaining to the residential units which were under construction but not sold was provisional ITC which might be required to be reversed by the Respondent, if such units remained unsold at the time of issue of the Completion Certificate, in terms 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 was 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 exempted supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as was attributable to the said taxable supplies including zero-rated supplies".

Section 17 (3) "The value of exempted supply under sub-section (2) shall be such as maybe prescribed and shall include supplies on which the recipients 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 ITC pertaining to the unsold units might not fall within the ambit 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 proportionate benefit of additional ITC available to him post- GST. W

- iv. Prior to implementation of GST w.e.f. 01.07.2017, the Respondent was eligible to avail CENVAT credit of Service Tax paid on Input Services. However, CENVAT credit of Central Excise duty paid on inputs was not admissible as per the CENVAT credit Rules, 2004, in force at the material time. Vide reply dated 13.02.2020 the Respondent had stated that they had opted for MVAT Composition Scheme vide Notification No. VAT.1510/CR-65/Taxation-1 dated 09.07.2020, under which VAT was payable @1% on the agreement amount specified in the agreement or stamp duty in respect of said agreement under Bombay Stamp Act, 1958, whichever was higher. Therefore, the Respondent was not eligible for VAT credit in pre-GST period. Further post-GST, the Respondent could avail input tax

credit of GST paid on all the inputs and input services including the sub-contracts. The Respondent submitted the details of input tax credit availed by them and their turnover for the project “Anmol Fortune II (Tower-F)” during the pre-GST (April, 2016 to June, 2017) and post-GST (July, 2017 to September, 2019) periods, duly reconciled with their ST-3, VAT and GSTR-3B returns and credit registers, are furnished in Table-‘B’ below:

Table-‘B’

(Amount in Rs)

S.No.	Particulars	April,2016 to June,2017(Pre-GST)	July, 2017 to Sept., 2019(Post-GST)
1	Credit of Service Tax Paid on Input Services (A)	2,06,77,329	
2	Input Tax Credit of VAT paid on Inputs (B)	-	
3	Total CENVAT/VAT/Input Tax Credit Available (C=A+B)	2,06,77,329	
4	Input Tax Credit of GST Availed (D)		4,67,26,531
5	Total Turnover from Residential Area (E) (Excluding post OC sale & cancelled units)	50,12,02,728	1,32,31,04,171
6	Total Saleable Area (F)	1,32,587	1,32,587
7	Sold Area relevant to Turnover in Sq Ft. (G)	90,126	1,06,401
8	ITC proportionate to Sold Area (H= (C or D)* G/F)	1,40,55,412	3,74,98,017
9	Ratio of Cenvat/Input Tax Credit to Turnover (I=H/E*100)	2.80%	2.83%

- v. From the above Table-‘B’, it was clear that the input tax credit as a percentage of the turnover that was available to the Respondent during the pre-GST period (April, 2016 to June, 2017) was 2.80% and during the post-GST period (July, 2017 to September, 2019), it was 2.83%. This confirms that post-GST, the Respondent have benefited from additional input tax credit to the tune of 0.03% [2.83% (-) 2.80%] of the taxable turnover.
- vi. 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. Accordingly, the profiteering has been examined by comparing the applicable tax rate and ITC available for the pre-GST period (April

2016 to June 2017) when Service Tax 4.5% with the post-GST period (July, 2017 to September, 2019) when the effective GST rate was 12% on construction service. On the basis of the figures contained in Table-'B' above, the comparative figures of the ratio of ITC availed/available to the turnover in the pre and post GST periods, recalibrated base price and the excess collection (profiteering) during the post-GST period has been tabulated by the DGAP in Table-'C' below:

Table:'C'

(Amount in Rs)

SN	Particulars		Pre-GST	Post- GST
1	Period	A	April,2016 to June,2017	July,2017 to Sept, 2019
2	Output tax rate (%)	B	4.5%	12.00%
3	Ratio of CENVAT/VAT/GST Input Tax Credit to Total Turnover as per Table - B above (%)	C	2.80%	2.83%
4	Increase in input tax credit availed post-GST (%)	D	-	0.03%
5	Analysis of Increase in input tax credit:			
6	Total Basic Demand during July, 2017 to Sept, 2019 (Excluding post OC sale & cancelled units)	E		1,32,31,04,171
7	GST @12%	F= E*12%		15,87,72,501
8	Total demand	G= E+F		1,48,18,76,672
9	Recalibrated Basic Price	H=E*(100-D)/100 or 99.97% of E		1,32,27,07,240
10	GST @12%	I=H*12%		15,87,24,869
11	Commensurate demand price	J=H + I		1,48,14,32,109
12	Excess Collection of Demand or Profiteered Amount	K=G - J		4,44,563

- vii. From the Table- 'C' above, it was observed that the additional input tax credit of 0.03% of the turnover should have resulted in commensurate reduction in the basic 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 should have been passed on by the Respondent to the recipients. In other words, by not reducing the pre-GST basic price by 0.03% on account

of additional benefit of input tax credit and charging GST @ 12% on the pre-GST basic price, the Respondent appear to have contravened the provisions of Section 171 of the Central Goods and Services Tax Act, 2017.

- viii. On the basis of the aforesaid CENVAT input tax credit availability in the pre and post-GST periods and the demands raised by the Respondent on the Applicant and other home buyers towards the value of construction on which GST liability @ 12% was discharged by the Respondent during the period 01.07.2017 to 30.09.2019, the amount of benefit of input tax credit not passed on to the recipients or in other words, the profiteered amount comes to Rs. 4,44,563/- which includes 12% GST on the base profiteered amount of Rs. 3,96,931/-.
- ix. The Respondent vide their reply dated 24.07.2020 has claimed that they have passed on substantial amount of Rs. 58,65,423/- as the benefit of GST Input Tax Credit to the 117 customers in accordance with the requirements of Section 171 of CGST Act, 2017 to customers. A summary of category-wise profiteering & the benefit passed on is furnished in the Table-‘D’ below:

Table-‘D’

(Amount in Rs)

S. No.	Category of Customers	No. of Units	Area (in Sqft)	Amount Raised Post GST (July, 2017 to September, 2019)	Profiteering Amt. as per DGAP	Respondent claimed that the benefit already passed on	Difference (Benefit to be passed on)	Remark
A	B	C	D	E	F	G	H=F-G	I
1	Applicant	01	1,400	117,04,000	3,933	60,305	-56,372	Excess benefit of ITC passed on
2	Other Than Applicant	84	88,726	90,89,54,971	3,05,409	46,15,827	-43,10,418	Excess benefit of ITC passed on
3.	Sub-Total	85	90,126	92,06,58,971	3,09,341	46,76,132	-43,66,791	Total excess benefit of ITC passed on

S. No.	Category of Customers	No. of Units	Area (in Sqft)	Amount Raised Post GST (July, 2017 to September, 2019)	Profiteer ing Amt. as per DGAP	Respondent claimed that the benefit already passed on	Difference(Benefit to be passed on)	Remark
4.	Other Than Applicant	12	16,275	40,24,45,200	1,35,222	4,75,148	-3,39,927	As per Sl. no 12 of Cost Sheet, unit sold from 01.07.2017 to 05.11.2018 (OC) and agreement done after adjusting benefit GST input tax credit. However, benefits have been passed on.
5.	Other Than Applicant	16	21,012	49,39,39,914	0	6,13,445	-6,13,445	Sold units after 05.11.2018 (post OC). However, benefits have been passed on
6.	Other Than Applicant	4	2,965	1,26,59,000	0	1,00,698	-1,00,698	Cancelled Units.
7.	Other Than Applicant	2	2,209					Unsold Units.
	Grand Total	119	1,32,587	1,82,97,03,085	4,44,563	58,65,423	-54,20,860	Total excess benefit of ITC passed on

- x. From the above table "D" that in respect of 117 customers, including applicant, the excess benefit of ITC to the tune of Rs. 54,20,860/- has already been passed on by the Respondent. The benefit of ITC passed on by the Respondent has been duly verified with the copies of Credit Vouchers, Sample Ledgers, Communication letters to the customers (sample basis), List of Customers and Acknowledgements (sample basis).
- xi. On being asked to confirm the receiving of the benefit of ITC, the Applicant vide email dated 25.09.2020 informed that he has received an amount of Rs. 60,305/- from the Respondent. Further, the Respondent vide email dated 13.11.2020 provided the email IDs of 84 customers including the Applicant. The DGAP sent Email to all 83 customers for confirmation of whether ITC benefit has been

passed on to them. Responses from 10 customers have been received till date, all of whom have confirmed the receipt of benefit of ITC and no denials have been received so far.

- k) the above computation of profiteering was with respect to 97 customers from whom payments had been received by the Respondent during the period 01.07.2017 to 30.09.2019, whereas the Respondent have booked a total number of 117 flats till 30.09.2019. Out of remaining 20 (16+4) units, 16 units were booked after receipt of OC i.e. during the period 05.11.2018 to 30.09.2019 (investigation period) and 04 were those that have been cancelled as mentioned in Table-D above. In pre-GST period (April, 2016 to June, 2017), demands were raised from 85 buyers who had booked the units and the net total of demands raised from such units only has been taken into consideration. Similarly, in the post-GST period, demands were raised from 97 buyers who had booked the units and the net total of demands raised from such units only has been taken into consideration. If the input tax credit in respect of those units from whom no demands had been raised in the concerned period is considered for calculation of profiteering in respect of units where demands has been raised in the relevant period, the input tax credit as a percentage of turnover would be distorted and erroneous. Further, the benefit of input tax credit in respect of these 04 units should not be taken into account because such units were shown as cancelled in home buyers list submitted by the Respondent.
- l) The DGAP has concluded the benefit of additional ITC of 0.03% of the turn over i.e. Rs. 4,44,563/- accrued to the Respondent for the project "Anmol Fortune II (Tower F)" from the Applicant No. 1 and other home buyers. However, the Respondent claimed to passed on the total benefit of ITC of Amount Rs. 58,65,423/- to the Recipient of services/Home buyers.
- m) The DGAP in his report has further mentioned that the present investigation covered the period from 01.07.2017 to 30.09.2019. Profiteering, if any, for the period post October, 2019, has not been examined as the exact quantum of ITC that would be available to the Respondent in future could not be determined at this stage, when the construction of the project was yet to be completed. Further, it was

observed that the Respondent had supplied construction services in the State of Maharashtra only.

- n) The DGAP has further reported that Section 171 (1) of the CGST Act, 2017 was not attracted in the present case and that in the present Report any reference to the CGST Act, 2017 and the CGST Rules, 2017, would also include reference to the corresponding provisions of the relevant SGST/UTGST/IGST Acts and the Rules.
3. A copy of the investigation report dated 31.12.2020 was provided to the Respondent and to the Applicant No. 1 as per the Minutes of the Meeting of Authority held on 05.01.2021 and as conveyed vide letter dated 05.01.2021. The Respondent vide E-mail dated 02.02.2021 submitted that an amount of Rs. 58, 65,423/- instead of 4, 44,563/- as was calculated by themselves finally as profiteering, had been paid by them to their customers. However, the Applicant No. 1 did not submit any submissions against the DGAP's report.
4. Copy of the above submissions dated 02.02.2021 of the Respondent was supplied to the Applicant No. 1 and to the DGAP to file their reply and clarifications respectively. However, the Applicant No. 1 has not submitted any written submissions in respect of the above submissions of the Respondent. The DGAP filed his supplementary/verification report dated 10.03.2021 and has inter-alia stated that :-
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- i. the Respondent was requested to provide the details of benefit passed on to the home buyer along with necessary documents like Credit Notes, Account Ledgers of the home buyers and also provide the email id's and phone numbers of the home buyers.
 - ii. the Respondent has claimed to passed on the ITC benefit to the home buyers as tabulated below:-

S.No.	Description/Particulars	No. of Flats	ITC benefits passed (in Rs.)	Remarks
1	Flats sold in pre-GST Out of 89, flats cancelled later on	89 4	47,76,830/- 1,00,698/-	Passed on the benefit through Credit Voucher(Out of 89, 4 flats were cancelled later on)
2	Flats sold post-GST before OC	12	4,75,148/-	Claimed to have passed on the ITC benefit at the time of booking (through cost Sheet)
3	Flats sold after OC	16	6,13,445/-	
4.	Unsold flats	2	-	-
5	Total (flats & benefit passed on)	117	58,65,423/-	-

- iii. The claim of the Respondent in respect of 89 home buyers who booked flats in pre-GST regime, 84 email id's were furnished by the Respondent. out of which only 23 home buyers have confirmed receipt of the ITC benefit and 2 home buyers has denied the receipt of any benefit from the Respondent Whereas, the remaining home buyers did not respond to the communication made by the DGAP.
- iv. The claim of the Respondent in respect of 12 home buyers who booked flats in post-GST regime but before the receipt of OC, the DGAP observed that in the Agreement nowhere it was mentioned that the benefit of ITC of GST has been considered while arriving at the total sale value. On Comparison of the price of flats values in pre and post GST periods, no reduction in base price of the flats was appeared. Hence, the claim of the Respondent is incorrect about the entire profiteered amount of Rs. 1,35,222/-.
5. With respect to the claim of the Respondent in respect of 16 Flat buyers who booked flats after receipt of OC, the DGAP observe that 16 units that were booked after receipt of OC, are neither a supply of goods nor a supply of services in terms of para 5 of Scheduled II of the Central Goods and Services Tax Act, 2017. Therefore, the sale of these units after receipt of OC would not fall within the ambit of GST and the Respondent could not charge GST on such sale of units. Therefore, these units were excluded from the computation of profiteering and accordingly the notice was not required to pass on the benefit of ITC in terms of Section 171 of the CGST Act, 2017.
6. The proceedings in the matter could not be completed by the Authority due to lack of required quorum of Members in the Authority during the period 29.04.2021 till 23.02.2022 and the minimum quorum was restored only w.e.f. 23.02.2022. The matter was taken up for further proceedings vide Order dated 23.03.2022.
7. Hearing in the matter was held on 05.04.2022. It was attended by Shri Archit Agarwal, Chartered Accountant and Ms Surekha Mahadik, AGM, M/s. Wadhwa Realty Pvt. Ltd. for the Respondent. Applicant No. 1 did not appear for the hearing. During the personal hearing the Respondent has re-iterated that

they had produced their documents and records as and when required by the office of DGAP. The Respondent has accepted liability in respect of 'Tower F' of "Anmol Fortune".

8. This Authority has carefully considered the Reports of the DGAP, submissions made by the Respondent and the case record. It is on record that Applicant No. 1 had filed a complaint alleging that the Respondent has not passed on the benefit of ITC to him by way of a commensurate reduction in the price of the flat purchased by him (Applicant No. 1) from the Respondent. The Authority finds that the DGAP, after investigation, has calculated that the Respondent got additional benefit of input tax credit of 0.03% of turnover amounting to Rs.4,44,563/- (inclusive of GST) for the project 'Anmol Fortune II (Tower-F)'. The DGAP has concluded that this benefit of Rs 4,44,563 was required to be passed on to the recipients. However, the Respondent has claimed to have passed on the benefit of an amount of Rs. 58,65,423/-.

9. Section 171 of the CGST Act provides as under:-

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"Any reduction in rate of tax on any supply of goods or services or the benefit of ITC shall be passed on to the recipient by way of commensurate reduction in prices."

It is clear from the plain reading of Section 171 (1) mentioned above that it deals with two situations :- One relating to the passing on the benefit of reduction in the rate of tax and the second pertaining to the passing on the benefit of the ITC. On the issue of reduction in the tax rate, it is apparent from the DGAP's Report that there has been no reduction in the rate of tax in the post GST period. Hence, the only issue to be examined is as to whether there was any net benefit of ITC with the introduction of GST. The Authority finds 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 2.80%, whereas, during the post-GST period (July-2017 to September, 2019), it was 2.83%. This confirms that in the post-GST period, the Respondent has been benefited from additional ITC to the tune of 0.03% (2.83%-2.80%) of his turnover and the same is required to be passed on by him to the recipients of supply, including the Applicant No. 1. The Authority finds that the computation of the amount of ITC benefit to be passed on by the Respondent

to the eligible recipients works out to Rs. 4,44,563/-. The DGAP has calculated the amount of ITC benefit to be passed on to all the eligible recipients as Rs.4,44,563/- on the basis of the information supplied by the Respondent. The Respondent has not disputed the methodology adopted by the DGAP or the amount of profiteering worked out by the DGAP. The names of such homebuyers along with unit **number and the benefit already passed on is enclosed with this order as Annexure-A.**

10. In view of the above discussions, the Authority concur with the DGAP report dated 31.12.2020. The Authority determines that the Respondent have profited by an amount of Rs. 4,44,563/- for the project 'Tower F' in the project "Anmol Fortune-II" during the period of investigation i.e. 01.07.2017 to 30.09.2019. The Authority has also taken note of DGAP verification report dated 10.03.2021 regarding claim of the Respondent that they have passed on Rs. 58,65,423/-. As per the said report, only 23 home buyers out of 117 home buyers have confirmed receipt of the ITC benefit and 2 home buyers have denied receipt of any benefit from the Respondent, the remaining home buyers did not respond to the communication made by the DGAP. Thus, evidence in respect of only 23 out of 117 customers has been submitted. Hence, such verification is neither definite nor conclusive.

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The claim of their refund along with the interest @18% thereon, from the date when the above determined profited amount was profited by him till the date of such payment, in line with the provisions of Rule 133 (3) (b) of the CGST Rules 2017, need to be verified by the concerned CGST/SGST Commissionerate.

11. This Authority under Rule 133 (3) (a) of the CGST Rules, 2017 orders that the Respondent shall reduce the prices to be realized from the buyers of the flats/Customers commensurate with the benefit of ITC received by him as has been detailed above.
12. The concerned jurisdictional CGST/SGST Commissioner is directed to ensure compliance of this Order. It may be ensured that the benefit of ITC i.e profited amount is passed on by the Respondent to each recipient of supply as mention in paragraph 9 and 10 above along with interest @18%, wherever

applicable, from the date that such amount was profiteered till the date of return of such profiteered amount as per the provisions of Rule 133 of the CGST Rules, 2017 within three months of the date of receipt of this Order failing which such amounts shall be recovered as per the provisions of the CGST Act, 2017. In this regard an advertisement of appropriate size (visible enough to public at imminent page) may also be published by the concerned Commissioner in minimum of two local Newspapers/vernacular press in Hindi/English/local language with the details i.e. Name of builder (Respondent) – M/s. Wadhwa Realty Pvt. Ltd, Project- ‘Tower F’ in the project “Anmol Fortune II” Location- Goregaon, Mumbai and amount of profiteering Rs. 4,44,563/- so that the concerned Customers can claim the benefit of ITC, if not passed on, till now. Customers/homebuyer/recipient may also be informed that the detailed NAA Order is available on Authority’s website www.naa.gov.in. Contact details of concerned Jurisdictional CGST/SGST Commissioner responsible for compliance of the NAA’s order may also be advertised through the said advertisement. Such an advertisement will help ensure that is compiled with mandate of Section 171(2) of the CGST Act and will be a step to make certain that the benefit due to every eligible recipient is received by him from the Respondent.

13. The concerned jurisdictional CGST/SGST Commissioner shall also submit a Report regarding compliance of this Order to this Authority and the DGAP within a period of 4 months from the date of receipt of this Order. N
14. Further, the Hon’ble Supreme Court, vide its Order dated 23.03.2020 in Suo Moto Writ Petition (C) no. 3/2020, while taking suo-moto cognizance of the situation arising on account of Covid-19 pandemic, has extended the period of limitation prescribed under general law of limitation or any other special laws (both Central and State) including those prescribed under Rule 133(1) of the CGST Rules, 2017, as is clear from the said Order which states as follows:-

“A period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended w.e.f. 15th March 2020 till further order/s to be passed by this Court in present proceedings.”

Further, the Hon'ble Supreme Court, vide its subsequent Order dated 10.01.2022 has extended the period(s) of limitation till 28.02.2022 and the relevant portion of the said Order is as follows:-

"The Order dated 23.03.2020 is restored and in continuation of the subsequent Orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings."

Accordingly this Order having been passed today falls within the limitation prescribed under Rule 133(1) of the CGST Rules, 2017.

15. A copy of this order be sent, free of cost, to the Applicant No.1, the DGAP, the Respondent, Commissioners CGST/SGST Mumbai, the Principal Secretary (Town and Country Planning), Government of Maharashtra as well as MHRERA for necessary action.

S/d

(Amand Shah)
Technical Member &
Chairman



(Hitesh Shah)
Technical Member

S/d

(Pramod Kumar Singh)
Technical Member

Certified Copy

(Dinesh Meena)
NAA, Secretary

Encl:- Annexure "A" (Pages 1 to 3).

F.No. 22011/NAA/02/Wadhwa Realty/2021

Dated: 21.07.2022

Copy To:

1. M/s Wadhwa Realty Pvt. Ltd., 301, 3rd Floor, Platina, Plot No. C-59, G Block, Bandra Kurla Complex, Bandra East, Mumbai – 400098.
2. Shri Atul Waichal, A-7/1, Indrayudh GHS Ltd., MG Road, Goregaon (W), Mumbai
3. Directorate General of Anti-Profiteering, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, New Delhi-110001.
4. Pr. Chief Commissioner of Central Goods & Services Tax, Mumbai Zone GST Building, 115 M.K. Road, Opp. Churchgate Station, Mumbai-400020.
5. Commissioner of Commercial Taxes, GST Bhavan, Mazgaon, Mumbai- 400 010.

6. Secretary MHRERA ,3rd Floor, A-Wing, SRA Administrative Building, Anant Kanekar Marg, Bandra East, Mumbai Maharashtra 400051
7. Principal Secretary, Town and Country Planning, Bandra-Kurla Complex M.M.R.D.A. Office Building, Bandra-Kurla Complex,C-14 & 15, E Block Bandra (East),Mumbai - 400 051
8. Guard file 