

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

Order No. : 38/2022
Date of Institution : 31.08.2020
Date of Order : 19.07.2022

In the matter of:

1. Kishore Arjandas Udasi, Flat No 501, Mahavir Residency, Nr. Balrajeshwar Temple, LBS Marg, Mulund (W), Mumbai-400080.
2. Director General of Anti-Profiteering (DGAP), 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 Wheelabrator Alloy Castings Pvt. Ltd., Head Office: Runwal & Omkar E Square, Off. Eastern Exp. Highway, 4th Floor, Sion (E), Mumbai-400022.

Respondent

Quorum:-

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



Present:-

1. Kishore Arjandas Udasi Applicant No. 1 in person.
2. Sh. Prashant Mallya, Sh. Ketan Siddhapura and Nitesh Vaish on behalf of the Respondent.

ORDER

The instant Report dated 31.08.2020, has been furnished by the Director General of Anti-Profiteering (DGAP), under Rule 129 (6) of the Central Goods & Services Tax (CGST) Rules, 2017 pursuant to the Interim Order No. 01/2020 dated 01.01.2020 of the National Anti-Profiteering Authority (NAA or the Authority) in respect of earlier DGAP's Report dated 26.06.2019. The Authority vide above said Interim Order had directed the DGAP to reinvestigate the matter under Rule 133 (4) of the CGST Rules 2017 on the following grounds/issues:-

- (i) *Whether the Respondent has passed on the benefit of ITC to his buyers as has been claimed through documentary evidence furnished by him during the course of the present proceedings?*
- (ii) *In case the Respondent has passed on the ITC benefit then what is the amount of the benefit passed on?*
- (iii) *What is the amount of ITC the benefit of which is required to be passed on by the Respondent to his recipients after correctly considering the figures of Cenvat credit?*
- (iv) *What is the amount of turnover to be taken into account during the period from 01.07.2017 to 31.12.2018?*
- (v) *What is the profiteered amount and entitlement of benefit of ITC to be passed on to each eligible home-buyer including the Applicant No. 1?*

The brief facts of the present case are that an application dated 09.08.2018 was filed before the Maharashtra State Screening Committee by the Applicant No. 1 under Rule 128 of the CGST Rules 2017 alleging profiteering by the Respondent in respect of purchase of a flat, T4-1004 OAK, in Tower-4 of the Respondent's project "**Runwal Forests**" near Mangatram Petrol Pump, LBS Marg, Kanjurmarg (W), Mumbai-400078. The Applicant No. 1 had alleged that the Respondent had not passed on the benefit of input tax credit to him by way of commensurate reduction in price on implementation of GST w.e.f. 01.07.2017, in terms of Section 171 of the Central Goods and Services Tax Act, 2017.

2. The Maharashtra State Screening Committee on Anti-profiteering had examined the above application dated 09.08.2018 and prime facie observed that Section 171 of the Central Goods and Services Tax Act, 2017 had been contravened. Thereafter the said application with its recommendation had been forwarded to the Standing Committee for further action in terms of Rule 128 of the CGST Rules 2017.

3. The aforesaid reference was examined by the Standing Committee on Anti Profiteering and after due consideration it was forwarded to the DGAP to conduct a detailed investigation in the matter.
4. On receipt of the said reference from the Standing Committee, the DGAP had investigated the matter in accordance section 171 of CGST Act 2017 and submitted his Report dated 26.06.2019 to this Authority wherein the DGAP had confirmed that the Respondent had violated the provisions of section 171 of the CGST Act 2017 and benefited from additional ITC of 2.59% of their turnover during the period from July 2017 to December 2018.
5. The period covered in the present investigation is from 01.07.2017 to 31.12.2018.
6. This Authority in its meeting held on 09.07.2019 after considering all the facts of the said Report dated 26.09.2019, had issued Notice dated 09.07.2019 to the Respondent directing him to explain why the above Report should not be accepted and his liability for violation of the provisions of Section 171 of the CGST Act 2017 should not be fixed. Further, this Authority had afforded 03 (three) personal hearings scheduled on 09.08.2019, 29.08.2019 and 17.09.2019 to hear the Applicants and the Respondent in the interest of natural justice, which were attended by Applicant No. 1 and authorized Representatives viz. Sh. Prashant Mallya, AVP-Tax, Sh. Sumit Mundra, Accounts Manager and Sh. Prasanna Sudke, Consultant of Respondent. During the said hearings, the Respondent had furnished his submissions dated 08.08.2019, 29.08.2019 and 17.09.2019 wherein he had raised several objections.
7. Further, this Authority after careful examination of the DGAP's Report dated 26.06.2019 and supplementary Report dated 14.10.2019, submissions of the Respondent and other material place on records, had remanded the matter back under the provisions of Rule 133 (4) of the CGST Rules 2017, vide Interim Order No. 01/2020 dated 01.01.2020 to the DGAP directing him to reinvestigate on the issues mentioned in paragraph-1.
8. Accordingly the DGAP had submitted his instant Report dated 31.08.2020 to this Authority, wherein, the DGAP, has inter alia, stated that:-

(I) On receipt of the aforesaid order from this Authority on 03.01.2020, the information/documents submitted by the Respondent were re-examined and cross-verified with the Report dated 26.06.2019 submitted by him before this Authority. He further stated that at the time of submission of above mentioned Investigation Report dated 26.06.2019, the Respondent had submitted the requisite information and data for the period covered under investigation. Since no direction to extend the period of investigation was given, hence the same set of data was sufficient for current re-investigation. The Respondent's submissions made before this Authority during hearings had been duly incorporated while examining the points raised by this Authority in its aforesaid I.O. dated 01.01.2020. The DGAP also stated that all the issues raised by this Authority in para 37 of aforesaid I.O. have been addressed suitably.

(II) The complaint of profiteering is in respect of purchase of a flat in the Respondent's project "Runwal Forests", near Mangatram Petrol Pump, LBS Marg, Kanjurmarg (W), Mumbai-400078, which has two components i.e., Towers T1 to T3 (Affordable Category) and Towers T4 to T11 (Other than Affordable Category). The DGAP has further informed that the Respondent submitted that prior to 01.07.2017 i.e. before GST was introduced, he was eligible to avail CENVAT Credit of Service Tax paid on the input services and Capital Goods, however, CENVAT credit of Central Excise Duty paid on the inputs was not admissible as per the CENVAT Credit Rules 2004, which were in force at the material time. Moreover, the Respondent was paying VAT @1% under Maharashtra VAT and was not eligible to avail any input tax credit of VAT paid on the inputs. In Post-GST period, the Respondent could avail input tax credit of the GST paid on all the inputs and input services. The DGAP has stated that Post-GST implementation, the Central Government, on the recommendation of the GST Council, had levied 18% GST (effective rate was 12% in view of 1/3rd abatement on value) on construction service, vide Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017. The effective GST rate on construction service in respect of affordable and low-cost housing was further reduced from 12% to 8%, vide Notification No. 1/2018-Central Tax (Rate) dated 25.01.2018. Further he also stated that in view of the change in the GST rates, the issue of profiteering has been examined in two parts, i.e., by comparing the

applicable tax rate and the availability of input tax credit/credit of Service Tax paid on inputs during the pre-GST period (April, 2016 to June, 2017) with (1) the post-GST period from July, 2017 to 24.01.2018, when the effective GST rate was 12% for all towers and (2) with the GST period from 25.01.2018 to 31.12.2018, when the effective GST rate was 8% for affordable housing and 12% for normal housing.

(III) The DGAP has submitted the point wise reply to the queries raised vide para 24 of the I.O. dated 01.01.2020 as under;

(a) In reply to the query as mentioned at para 1 (i) supra, the DGAP has submitted:-

(i) that during the course of hearing before this Authority, the Respondent had contended that the investigation by the DGAP was not appropriate because he had overlooked the fact that in case of most flats booked after 01.07.2017, the original agreement value had already been reduced by way of discount and GST was charged on reduced agreement value.

The Respondent claimed that for units booked post 01.07.2017 across both categories of units, upfront discounts up to 5.8% on the original agreement value have been passed at the time of sale, by way of reduction in the original agreement value and GST was charged on the reduced agreement value only. The Respondent also averred that he had already passed on discount to his customers who had booked units post-GST totalling Rs. 7,48,06,433/- (vide submission dated 08.08.2019) and no further discount was required to be passed on to these customers on progress billings. 18

In case of most of the flats sold after 01.07.2017, the original agreement value has already been reduced by way of discount and GST was demanded on reduced agreement value. The Respondent had submitted copies of cost sheets of flats sold after 01.07.2017 during the course of hearing as documentary evidence to establish his point.

(ii) that the documents submitted by the Respondent have been re-examined in relation to the contention that benefits have already been passed on by him.

The DGAP has further stated that the Respondent in response to the Notice for Investigation by the DGAP, vide his reply dated 21.06.2019 had submitted the details of benefits passed on to each home-buyer however, supporting documentary evidences for the same were not made available to establish how these benefits were extended to the home-buyers.

The details of benefits extended were however mentioned against such home-buyers in Annex- 15 (Column V) and Annex-16 (Column T) of the Report dated 26.06.2019. Further the DGAP on perusal of the cost-sheets, has observed that for new bookings of flats post-GST implementation, the Respondent had mentioned the cost of individual flat with the home-buyer and the benefit on account of GST has been deducted on a case to case basis to arrive at the final agreement value.

The cost sheets have signature of flat-buyers as their mark of consent, agreeing to the quantum of benefit being offered on account of GST as upfront discount in the Agreement value.

Further all the Cost sheets mention specifically that "Post absorption of the incremental tax impact on the GST by the developer, we would not be required to pass any additional benefit under the Anti-Profitteering provision under section 171 of CGST Tax Act 2017." N

(iii) that now the task at hand was to determine if the benefit so extended through discounts in the cost sheets was real and commensurate with the benefit of additional input tax credit available due to implementation of GST.

In this regard, on a random basis few home-buyers were asked by the DGAP to verify if the cost sheets signed by them were real and verify details of benefit of GST extended to them in agreement value through upfront discount and the Respondent was also asked to submit copies of agreements with these homebuyers to verify the claim that the agreement value derived after passing benefit of GST in the cost sheet matched with the actual agreement value for the customer.

(iv) that the Respondent was asked by the DGAP to explain the rationale behind the benefit extended by him to the home-buyers who have booked flats post 01.07.2017.

In this regard, the Respondent submitted that in case of homebuyers who booked flats after 1st July 2017, in both the categories i.e. affordable and other than affordable, upfront discount up to 5.8% on the original agreement value was passed on at the time of booking itself by way of reduction in the value to reduce the impact of increase in cost owing to increase in the rate of tax from 5.5% (4.5% Service Tax + 1% MVAT) in the pre-GST regime to 12% on account of introduction of GST.

Accordingly, the original agreement values have already been reduced by giving discount and GST on applicable rate was demanded from the customers on the reduced agreement value. The increase in tax rate from 5.5% to 12% resulted in higher cost incidence for customers.

The DGAP has submitted that the Respondent contended that the incremental tax burden was absorbed by him by offering discount up to 5.8% in the beginning itself as anti-profiteering discount subject to the condition that after this discount was provided there will be no further liability to provide any discount under section 171 of the CGST Act 2017. N

The additional benefit of Input Tax Credit arising due to implementation of GST could only be ascertained and quantified at the end of completion of construction as neither sales nor purchases were evenly spread. Also, milestones of billing to existing customers and receipt of inward supply in project was not necessarily linked to each other in his case.

The uneven distribution of sales, progress billings and consumption and availability of Input Tax Credit results in fluctuation of the ITC ratio i.e. the percentage of ITC benefit to be passed to customers each month.

These discounts were offered despite the inability to access the exact quantum of ITC benefit that would accrue to him in future. Cost sheets acknowledged by customers would corroborate the claim that Anti-profiteering discounts were passed to such customers.

In this regard, the DGAP has stated that the Respondent in his submissions dated 17.09.2019 had submitted that an amount of Rs. 9,39,81,108 (affordable category) and Rs. 15,76,14,471 (other than affordable category) has already been passed on as discount to customers in the post GST period till December, 2018.

The Respondent vide his said submissions, had also submitted that the details of benefits as submitted on 08.08.2019 have been corrected at Point A (iv) of Submissions dated 17.09.2019.

Detailed reconciliation of the benefits extended with home-buyers list was submitted by the Respondent to the DGAP. The DGAP had examined the claim of the Respondent to have reduced the agreement value randomly by making calls to a few home-buyers and they were asked to verify if the benefits offered in cost sheets on account of GST were actually agreed upon by them at the time of purchase.

However over telephonic conversations, email-ids of certain home-buyer were obtained, and emails were sent to the home-buyers. Copies of emails were sent to 7 home-buyers and reply was received from one home-buyer, namely, Shri Rajat Tomar.

Through emails, copies of the cost sheets and index-ii of the registered agreement were sent to the respective home buyers requesting to verify if the upfront discount as mentioned in the cost sheets on account of GST was accounted for at the time of booking to arrive at the agreement value, and if the cost sheets were bonafide.

In his response, Shri Rajat Tomar has stated that the cost sheet was correct.

(v) that after going through the cost sheets and summary made available by the Respondent, it was evident that the methodology employed by the Respondent was to calculate the quantum of upfront discounts by comparing the increase in tax rate across tax regime.

Tax incidence upon the recipients was 5.5% (4.5% Service Tax +1% MVAT) in pre-GST period, which increased to 12% in post-GST era. Further, the Respondent contended that as the exact quantum of ITC

benefit that would accrue to him over the period was not available, he had chosen to absorb the incremental tax impact by passing upfront discount to the tune of approximate incremental tax so that there is no cost escalation on account of increased tax rates for home-buyers.

The DGAP has stated that though, the Respondent's reasoning behind offering such approximate discount to the new home-buyers in absence of knowledge of exact quantum of ITC appeared to be logical, it was pertinent to mention that the quantum of benefits so offered by the Respondent to the home-buyers has varied. It is 6.5% (12% - 5.5%) for the normal home-buyers, and in case of affordable houses, wherein effective GST rate was reduced w.e.f. 25.01.2018 from 12% to 8%, the discount offered varies in the range 2.5-3% (8%- 5.5%), for units booked after rate reduction.

(vi) that the agreement value of flats sold post implementation of GST, has been looked into to find out if there was an actual decrease in the agreement cost after implementation of GST compared to the period prior to implementation of GST for similar units.

The DGAP has observed that there is a drop in the agreement value for units booked post-GST as compared to the period immediately before GST implementation and it was pertinent here to mention although the cost of flat was not a constant price, however the trend showed that the prices have actually come down as claimed by the Respondent.

The trend is illustrated below as Table A wherein it is apparent that post-GST the prices of the flats have actually been reduced by the Respondent.

Table A

Flat no. (post-GST)	RERA Carpet Area	Total Agreement Value (in Rs.) (Excluding Taxes)	Date of Allotment	Flat No. (Pre GST)	RERA Carpet Area	Total Agreement Value (in Rs.) (Excluding Taxes)	Date of Allotment
T1-2304	471	10,100,212	9/25/2017	T3-3502	471	12,610,750	5/15/2017
T2-2403	471	9,641,004	8/13/2017	T1-2402	471	11,762,500	5/12/2017
T3-1907	471	9,641,004	9/5/2017	T3-1908	471	12,662,500	5/31/2017
T3-2007	471	9,641,004	8/25/2017	T3-2008	471	12,062,500	6/3/2017
T3-2104	471	9,923,594	9/25/2017	T3-2105	471	12,062,500	5/19/2017
T4-1406	732	14,776,217	8/20/2017	T4-1705	753	16,855,435	6/30/2017
T6-1203	661	13,309,013	8/19/2017	T6-1302	661	14,927,500	4/28/2017
T6-2101	661	13,704,638	9/11/2017	T6-2001	661	14,531,650	6/24/2017
T6-2503	661	13,309,013	8/11/2017	T6-2502	661	16,187,500	4/10/2017
T7-2302	771	15,448,685	8/4/2017	T7-2202	771	18,768,750	5/30/2017

Now, task at hand was to determine if the benefits so extended were real, and commensurate with the benefit of Input Tax Credit.

The DGAP has stated that the Respondent had submitted cost sheets in support of his claim that the benefit of GST was passed on to the home-buyers, and at least one home-buyer has confirmed the claim of the Respondent therefore, relying on the documentary evidence of cost sheets, comparison of rates of similar units as mentioned above in Table 'A', copies of agreement with the home-buyers who booked flats post-GST and response of aforementioned home-buyer that benefits as mentioned in the cost sheets were accounted for, it appeared that the Respondent has brought down the prices for units booked post GST implementation as mentioned in his cost sheets.

(vii) that the details obtained upon perusal of the home-buyer details, details of the demands raised from home-buyers and details of benefits passed on by the Respondent are mentioned in Table B as:

Table B

		Home-buyers Data		
		Affordable Housing	Other Than Affordable	Total
Sales of Units	Sold Pre-GST	312	500	812
	Post-GST with benefit of ITC	177	161	338
	Sold Post-GST without benefit of ITC	54	33	87
	Total Sold	543	694	1237
	Unsold	97	993	1,090
	Total	640	1,687	2,327

Demands raised post GST	PRE-GST Sale Demand raised without ITC benefit	172	136	308
	Post GST Sale Demand without benefit of ITC	54	33	87
	Post GST Sale Demand with benefit of ITC	177	161	338
	Total	403	330	733

The DGAP upon perusal of the details as mentioned in Table B above, has submitted that it was clear that the Respondent has raised demands from a total of 733 home-buyers (403 in Affordable Category and 330 in Other than Affordable Category).

Out of the total home-buyers, ITC benefits have been extended to a total of 338 home-buyers (177 in Affordable Category and 161 in Other than Affordable Category) who had booked their units post-GST implementation, by way of upfront discounts on account of GST.

Further the DGAP has also observed that for a total of 87 home-buyers (54 in Affordable Category and 33 in Other than Affordable Category) who have booked units post-GST implementation, no benefit of ITC by way of upfront discount has been given. Also, details of benefits extended, if any, to the 308 home-buyers (172 in Affordable Category and 136 in Other than Affordable Category) who had booked their units prior to GST implementation, and demands have been raised post-GST, had been made available.

Accordingly, for the purpose of determination of the ratio of input tax credit to the turnover, in the post-GST (July, 2017 to December, 2018) period, turnover along with the upfront discounts (i.e. without deducting such discount) from all 733 home-buyers have been taken in the Table 'C' below.

(b) In reply to the query as mentioned at para 1 (ii) supra, the DGAP has stated that based upon the summary of benefits passed on by the Respondent through upfront reduction in agreement prices at the time of booking of flats post-GST implementation, in the period July, 2017 to December, 2018, the Respondent has passed on benefits to the tune of Rs. 9,39,81,108 (Affordable Category) and Rs. 15,76,14,471 (Other than Affordable Category).

On a pro-rata basis depending upon the demands raised, the corresponding figures were Rs. 6,36,09,860 (Affordable Category) and Rs. 9,83,57,243 (Other than Affordable Category) totalling to Rs. 16,19,67,103. This amount was exclusive of applicable GST.

(c) In reply to the query as mentioned at para 1 (iii) supra, the DGAP has stated:

(i) that in respect to said query, reference may be taken of the Respondent's submission dated 31.01.2019 where there was an error in the reconciliation of Cenvat/ITC and Turnover provided by the Respondent however, the data submitted and the reconciliation has been relooked into.

From the information submitted by the Respondent for the period April, 2016 to December, 2018, the details of the input tax credits

availed by him, his turnover from the project "Runwal Forests", the ratios of input tax credits to the turnovers, during the pre-GST (April, 2016 to June, 2017) and post-GST (July, 2017 to December, 2018) periods, are furnished in table- 'C' below.

Table 'C'		(Amount in ₹.)	
S. No.	Particulars	(Pre-GST) April, 2016 to June, 2017	(Post-GST) July, 2017 to December, 2018
1	Credit of Service Tax Paid on Input Services (A)	120,686,135	-
2	Input Tax Credit of VAT Paid on Inputs (B)	-	-
3	Total CENVAT/VAT/Input Tax Credit Available (C)= (A+B)	120,686,135	-
4	Input Tax Credit of GST Availed (D)	-	242,956,020
5	Total Turnover from Residential Area (E) (from Home-buyers list for live customers)	3,170,151,245	3,875,827,122
6	Total Saleable Area in sq. ft. (F)	1,613,379	1,613,379
7	Sold Area Relevant to Turnover in sq. ft. (G)	523,264	433,884
8	ITC proportionate to Sold Area (H)= (C) or (D) * G/F	39,141,894	65,337,859
9	Ratio of CENVAT/ VAT/Input Tax Credit to Turnover (I=H/E*100)	1.23%	1.69%

(ii) that from the above Table- 'C', it transpires 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 1.23% and during the post-GST period (July, 2017 to December, 2018), it was 1.69%.

This indicates that post-GST, the Respondent has apparently benefited from additional input tax credit to the tune of 0.46% [1.69%(-)1.23%] of the turnover.

(iii) that in this regard, reference may be taken of the Table 'C', where the ratios of input tax credits to the turnovers, during the pre-GST (April, 2016 to June, 2017) and post-GST (July, 2017 to December, 2018) periods, are furnished, wherein it was observed that benefit of only 0.46% has accrued to the Respondent, however, the upfront discounts offered to the new home-buyers were higher than the additional benefit of Input Tax Credit accruing to the Respondent.

The DGAP has further stated that in light of the above, it was clear that the Respondent had reduced prices for most of the home-buyers who

booked flats post GST introduction by an amount more than the commensurate benefit for the period under investigation.

(iv) that based on the above, it was clear that determination of benefit of additional Input Tax Credit, post implementation of GST, has to be carried out only for those homebuyers who have either booked units prior to GST implementation and no upfront discount had been offered to them and those home-buyers who booked units post-GST implementation but without any upfront discount, to determine the profiteering amount.

(v) that as mentioned above, the project has two categories of units, affordable low cost housing and other than affordable housing.

Out of total 11 (eleven) towers in the project, three (3) towers fall in the category of affordable low-cost housing comprising of a total of 640 units and the remaining eight (8) towers with a total of 1686 units fall in the category of other than affordable housing. In view of the change in the GST rate after 01.07.2017, the issue of profiteering has been examined in three parts, i.e., by comparing the applicable tax rate and the availability of input tax credit during the pre-GST period (April, 2016 to June, 2017) when Service Tax @ 4.5% and MVAT @1% were payable on both affordable housing and other than affordable housing with:

(1) the post-GST period from July, 2017 to December, 2018, for the category other than Affordable, which attracted effective GST @12%;

(2) the post-GST period from July,2017 to 24.01.2018, for Affordable Housing which attracted effective GST @12%; and

(3) the post-GST period from 25.01.2018 to 31.12.2018, for Affordable housing which attracted effective GST @ 8%.

Accordingly, on the basis of Table-C above, the comparative figures of tax rates and the ratios of input tax credits to the Respondent's turnovers in the pre-GST and post-GST periods, the recalibrated basic price (on account of benefit of additional input tax credit) as well as the excess collection (profiteering) during the post-GST period, are tabulated in table-'D' below:

Table-D

(Amount in Rs.)

S. No.	Particulars	Pre-GST	Post- GST			
			01.07.2017 to 31.12.2018	01.07.2017 to 24.01.2018	25.01.2018 to 31.12.2018	
1	Period	A	April,2016 to June, 2017	Other than affordable	Affordable	Affordable
2	Output tax rate (%)	B	5.50%	12.00%	12.00%	8.00%
3	Ratio of CENVAT/VAT/GST Input Tax Credit to Turnover as per Table - B above (%)	C	1.23%	1.69%	1.69%	1.69%
4	Increase in input tax credit availed post-GST (%)	D	-	0.46%	0.46%	0.46%
5	Analysis of Increase in input tax credit:					
6	Total Basic Demand during July, 2017 to December, 2018 *	E		494,851,850	94,323,308	380,558,465
7	GST @12% or 8%	F= E*12%		59,382,222	11,318,797	30,444,677
8	Total demand	G= E+F		554,234,072	105,642,105	411,003,142
9	Recalibrated Basic Price	H=E*(1-D) or 99.54% of E		492,575,531	93,889,421	378,807,896
10	GST @12% or 8%	I=H*12%		59,109,064	11,266,730	30,304,632
11	Commensurate demand price	J=H + I		551,684,595	105,156,151	409,112,528
12	Excess Collection of Demand or Profiteered Amount	K=G - J		2,549,477	485,954	1,890,614

*Turnover/Basic demand raised from homebuyers who have either booked units prior to GST implementation and no upfront discount had been offered to them or those home-buyers who booked units post-GST implementation but without any upfront discount.

(vi) that for the purpose of determination of profiteering, demands from only those customers have been taken into account, who had either booked their units prior to implementation of GST, or booked post-GST implementation but without any upfront discount on account of GST and the Respondent has not submitted documentary details as to how additional benefits of Input Tax Credit, if any, have been passed on to such home-buyers. For other units booked post-GST implementation, upfront benefits passed on seem to be already more than what that shall accrue on account of additional benefit of Input Tax Credit.

(vii) that from Table- 'D' above, it appeared that the additional input tax credit of 0.46% of the turnover should have resulted in commensurate reduction in the basic prices as well as cum-tax prices for units booked prior to GST implementation and 87 units booked post-GST but with no benefit passed on.

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 prices by 0.46% on account of additional benefit of input tax credit and charging GST @12% or 8% on the pre-GST basic prices, the Respondent appeared to have contravened the

provisions of Section 171 of the Central Goods and Services Tax Act, 2017.

(d) In reply to the query as mentioned at para 1 (iv) supra, the DGAP has stated that total demand as raised from the home-buyers inclusive of the benefits offered through upfront discount has been taken for determination of exact quantum of additional benefit of Input Tax Credit.

However, profiteering has been calculated only for those home-buyers who had booked units prior to implementation of GST and demands have been raised from them post GST implementation and 87 units booked post-GST but with no benefit passed on.

Accordingly, for the period 01.07.2017 to 31.12.2018, gross turnover of the Respondent was Rs. 3,71,38,60,019/- (exclusive of benefits of Rs. 16,19,67,103/- passed to 338 home-buyers) from 733 home-buyers.

For the purpose of calculation of profiteering, demands raised from home-buyers who booked their units prior to GST implementation and 87 units booked post-GST but with no benefit passed on have been considered.

For Affordable Housing category it is Rs. 47,48,81,773/- from 226 home-buyers, and in the category other than Affordable, it is Rs. 49,48,51,850/- from 169 home-buyers, totalling Rs. 96,97,33,623/- from across both the categories.

The Respondent has booked a total of 1237 units, however the computation of profiteering is only for the 395 home-buyers across the two categories, excluding those to whom benefit has already been passed on.

(e) In reply to the query as mentioned at para 1 (v) supra, the DGAP has stated that total profiteering for the Respondent is Rs. 49,26,045/-, inclusive of the amount of profiteering for Applicant No 1.

On this account, the Respondent has realized an excess amount to the tune of Rs. 3,763/- from the Applicant No.1 which includes both the

profiteered amount @ 0.69% of the basic price and the GST @12% on the said profiteered amount.

The Respondent has also realized an additional amount of Rs. 49,22,281/- which includes the profiteered amount @ 0.69% of the turnover (base price) from 394 other recipients who are not Applicants in the present proceedings.

The DGAP has also stated that the Respondent vide email dated 27.08.2020, had provided details of benefits of additional Input Tax Credit passed on to the Applicant No. 1 mentioned as "Anti-profiteering discount" in the of credit notes issued in favour of the Applicant No.1, as per his own calculation. The details are as follows:

Document No.	Date of Issue	Description	Invoice Reference	Date of issue of invoice	Amount
180001371	21.08.2020	Anti-profiteering discount	RV19/20/50001047	09.05.2019	Rs. 16,765
180001298	21.08.2020	Anti-profiteering discount	RV18/20/50002274	14.03.2019	Rs. 10,059
180000959	21.08.2020	Anti-profiteering discount	RV18/20/50000674	03.12.2018	Rs. 10,059
180000874	21.08.2020	Anti-profiteering discount	RFTX/27/00452/11	07.06.2018	Rs. 10,394

(IV) The DGAP has further submitted that in view of the aforementioned findings, it appeared that the provisions of Section 171(1) of the Central Goods and Services Tax Act, 2017, requiring that *"any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices"*, **have been contravened** by the Respondent in the present case. R

9. A Notice dated 07.09.2020 enclosing the DGAP's Report dated 31.08.2020 alongwith its annexures was issued to the Respondent directing him to explain why the above Report should not be accepted and his liability for profiteering should not be determined under section 171 of the CGST Act 2017 and to file his reply to the said Report.

10. The Respondent has furnished his reply vide his letter dated 07.10.2020 to the DGAP's Report dated 31.08.2020, wherein he has submitted:

(i) that the DGAP in his report has observed that for new bookings in the post- GST period, the benefit on account of GST has been deducted on a case to case basis to arrive at the final agreement value. The cost sheets have signatures of flat buyers as their mark of consent, agreeing to

the quantum of benefit being offered on account of GST as upfront discount in the agreement value. Further all the cost sheets mention specifically that "post absorption of the incremental tax impact on the GST by the developer, the developer would not be required to pass any additional benefit under the Anti-Profiteering provision under section 171 of the CGST Act 2017. Cost sheets where discounts have been offered to customers have already been submitted to this Authority for its perusal through his submission dated 17th Sept. 2019.

(ii) that the authenticity of these Cost sheets has been corroborated through response received from customers by the DGAP confirming that the Cost sheets and the discounts provided were correct.

(iii) that the DGAP has further held that the agreement values of flats sold post GST were actually lower compared to the prices in the pre-GST period which means that the customers in the post GST period have benefited from the GST discount provided through the cost sheets.

(iv) that the DGAP in his report has held that he (the Respondent) had violated the provisions of Sec. 171(1) of the CGST Act 2017 and profited to the tune of 0.46% or Rs. 49,26,044/-. However, the DGAP has arrived at this conclusion as he has not taken into account the discounts passed by the Respondent to customers through credit notes. Out of the total of 733 customers to whom demands were sent between 01st July 2017 to 31st Dec. 2018, ITC benefits were extended to 338 customers through cost sheets wherein the customers have acknowledged receiving the discount. Out of the balance 395 customers, ITC benefit discounts were passed on through credit notes in case of 381 customers. Discounts were provided to these customers @ 2.50% on the bill value. The total amount of discount passed to customers through credit notes amounts to Rs. 3,38,62,660/-. The pro-rated discount provided on invoices raised during the investigation period amounted to Rs. 2,45,79,594/-.

(v) that the balance 14 customers (total demand value—Rs. 1,95,80,646) have cancelled their bookings and thus are not entitled to ITC benefits. Cancellation deeds/credit notes on cancellation for these customers were attached to his reply.

(vi) that while the DGAP has claimed that he (the Respondent) had profited by Rs. 49,26,045/-, however if the ITC discounts passed to customers through credit notes were taken into account (amounting to Rs. 2,45,79,594/-) then he would have absorbed excess ITC discount of Rs. 1,96,53,549, this would mean that there was no profiteering by him and he had actually passed discount in excess of the rate at which he was required to pass ITC benefit to customers as per the DGAP's Report.

He accordingly requested this Authority to take into account the discounts extended to customers by him through credit notes which would establish that there was no profiteering by him and that he had passed on ITC benefits in excess of the rate at which he was required to pass on discount as per DGAP.

11. On receipt of the above said submissions dated 07.10.2020 of the Respondent, this Authority vide its order dated 07.10.2020 forwarded the same to the DGAP directing him to submit his clarifications under Rule 133 (2A) of the CGST Rules 2017.

12. The DGAP vide his Report dated 26.11.2020 has submitted his reply on 27.11.2020, stating as under:-

(i) in respect of paras 10 (i) to 10 (iii) as mentioned above, the DGAP submitted that he has already discussed them in his Report dated 31.08.2020.

(ii) in reply to paras 10 (iv) to 10 (vi) as mentioned above, the DGAP has referred to the Table-B and subsequent paras of his report dated 31.08.2020 and submitted that he has clearly mentioned that 87 home buyers out of 733 home buyers who have booked units post-GST implementation, no benefit of ITC by way of upfront discount has been given. The DGAP has also submitted that in this connection, Table-C of the said Report may also be referred where the ratios of input tax credits to the turnovers, during the pre GST and post GST periods are furnished, wherein it is noted that benefit of only 0.46% has accrued to the Respondent. The upfront discounts offered to the new home buyers have been taken into account in the report dated 31.08.2020. The profiteering

of additional ITC benefit of 0.46% to the Respondent has been worked out in the above Report in respect of only those home buyers who were not offered upfront discounts by the Respondent.

Further, the DGAP has referred to the Point No. iv of Para 8 of the Report dated 31.08.2020 for the amount of turnover taken and Point No. v of Para 8 of the said Report for the profiteered amount and entitlement of benefit of ITC to be passed on to each eligible home buyers including the Applicant No. 1.

The replies furnished at Points No. iv and v of Para 8 were self-explanatory and cover all the issues raised with respect to any bearing to the profiteering calculated for each recipient as excess amount of benefit passed on to one recipient could not be set off with a recipient who has not been extended the benefit of ITC, therefore, contention of the Respondent was not sustainable.

13. Further, this Authority has provided copy of the above said DGAP's clarification dated 26.11.2020 to the Respondent and Applicant No. 1 directing them to file their consolidated written submissions.

14. Accordingly, the Respondent vide his letter dated 23.12.2020 has furnished his reply to the above said DGAP's clarification, whereby;

(i) The DGAP has in Annexure-6 of his Report given a list of 394 customers to whom according to DGAP, discount benefits on account of Section 171 of CGST Act 2017 were not offered. He further argued that the DGAP in his Report has also remarked that he (the Respondent) had realised an excess amount of Rs. 3,763/- from the Applicant No.1 in the present case and the DGAP has further acknowledged his submissions and Credit Notes issued to Applicant No.1 totalling Rs. 47,277/- towards anti-profiteering discounts on invoices issued till March 2019. He also submitted that the Applicant No.1, through an undertaking signed by him has himself acknowledged receipt of discount of Rs. 1,17,056/- in full compliance by him of the provisions under Section 171 of the CGST Act 2017. He has also submitted the copies of the undertaking signed by the Applicant No. 1 and other customers.

(ii) The Respondent reiterated his submissions dated 07.10.2020 wherein he had mentioned that out 395 customers to whom DGAP claimed that no discount benefits were given, ITC discount benefits were passed through Credit Notes in case of 381 customers. He further stated that the copies of these Credit Notes were submitted by him to this Authority with his said submissions and the remaining 14 customers who have cancelled their bookings, were not entitled to ITC benefits. He claimed that the Credit Notes for invoice reversals on deeds in case of cancelled customers were provided in his said submissions.

(iii) The Respondent has also stated that out of 381 live cases, he had undertakings from 157 customers who have acknowledged and confirmed receipt of ITC discount in full compliance of the provisions made under Section 171 of the CGST Act 2017. He has further stated that these discounts were calculated @ 2% to 2.5% depending on the discount rate applicable at the time when the invoices were raised. He also submitted that he had already stated in his earlier submissions that the rate of discount fluctuated depending on the cumulative ITC availed and cumulative demands raised till the end of every month. As per his observation, the discount rate has always reduced due to ITC reversals on receipt of Occupancy Certificate. Further he stated that in any case the rate of discount calculated by him, was higher than the rate of 0.46% arrived by DGAP.

(iv). The Respondent has submitted that he had approached the balance 224 customers for such undertakings to further adduce the fact that discount benefits were passed on to them under Sec.171 of the CGST Act 2017, that would help him further corroborate the fact that ITC discounts had already been given. He further stated that these undertakings were generally given by customers at the time of possession and he expected these 224 customers to give him the undertakings over the next two months.

15. On receipt of the Respondent's submissions dated 23.12.2020, this Authority forwarded the same to the Applicant No. 1 for his consolidated written submissions and also in the interest of natural justice, an opportunity for personal hearing was granted to the Respondent and the Applicant No. 1 on 29.01.2021.

16. The Applicant No. 1 has submitted his reply through email dated 25.01.2021. He has provided copies of invoices dated 03.12.2018, 07.06.2018, 14.03.2019 & 12.04.2019, and claimed that ITC was Zero on the said invoices and stated as under:-

(i) that ITC was to be passed on at every invoice like he did on invoices post this complaint filing.

(ii) that in spite of reminders, the Respondent did not pass on the discounts during the period 03.10.2018 to 12.04.2019. He further stated that the Respondent has not given any interest on discount passed on and GST was collected @18% in advance. He claimed for interest for delayed ITC benefit passed on. He also stated that the Respondent had charged excess money and was not paying interest.

(iii) that the undertaking in respect of ITC was taken from him under duress during possession else the Respondent was not giving possession letter of his flat. The Respondent did not allow him to mention under protest on this undertaking.

(iv) that the Respondent had taken advance 1% MVAT on agreement value of Rs. 1,19,750/- on 25.08.2016 which was 100% on Agreement Value of Rs. 1,19,75,000/- but did not give any benefit to him, which was double taxation on him. He claimed that the Respondent should refund 40% of Rs. 1,19,750/- of MVAT collected from him, 60% of agreement value invoices were raised pre GST era so 40% on Rs. 1,19,750/- was double taxation. He claimed Rs. 47,900/- on this account.

(v) that the discount passed on @ 2.50% at possession was not correct according to him. He also submitted that the DGAP should mention how much profiteering was done as he had investigated the case. He further stated that the Respondent's claim that the DGAP's Report had calculated of profiteering 0.46% might be wrong.

17. Personal hearing was held on 29.01.2021. Consequent to such hearing the Authority vide its order dated 29.01.2021 had directed the DGAP to:

(i) clarify whether the Respondent has passed on the benefit of ITC to each eligible home buyer as has been claimed by him vide his submissions dated 07.10.2020 and to submit his Report alongwith documentary evidences to establish that the benefit of the ITC has been passed on by the Respondent to his homebuyers.

(ii) submit clarifications on the Applicant No. 1's submissions dated 25.01.2021 under Rule 133 (2A) of the CGST Rules 2017.

18. Accordingly, the DGAP vide his Report dated 25.02.2021 submitted his clarifications as called for by this Authority vide its said Order dated 08.02.2021 whereby:

(i) the DGAP, in reply to para 17 (i) supra, has submitted that the issue has already been verified and replied at para no. 8 of his Report dated 31.08.2020.

(ii) the DGAP, in reply to para 17 (ii) supra, has inter alia submitted that the issues were not related to investigation and pertained to the order of this Authority. He further submitted that the Applicant No. 1 has placed same facts and informed this Authority that the undertaking with respect to receipt of discount of GST was taken under duress by the Respondent. He also stated that the Applicant No. 1 has also made some other observations which were not related to investigation. 18

19. Since, the quorum of the Authority of minimum three Members, as provided under Rule 134 was not available till 23.02.2022, the matter was not decided. With the joining of two new Technical Members in February 2022, the quorum of the Authority was restored from 23.2.2022. Personal hearing was held on 12.04.2022. The Applicant No. 1 in person and Sh. Prashant Mallya, Sh. Ketan Siddhapura and Sh. Nitesh Vaish on behalf of the Respondent appeared before this Authority through video conferencing and they have reiterated their written submissions made earlier.

20. The Authority has carefully considered the Reports of the DGAP, numerous submissions of the Respondent and the Applicant No. 1 and the other material placed on record. It was noticed that repeated information and clarification were asked for from the DGAP, Applicants and the Respondent. The Authority also

finds that vide Interim Order 01/2020 dated 01.01.2020, it had directed the DGAP to re-investigate the matter on certain issue. The said Order was not challenged for any legal remedy and as such, the Authority observes that the methodology adopted by DGAP has attained finality. The Authority finds that:-

(i) The Applicant No. 1, vide his complaint dated 09.08.2018 had alleged that the Respondent was not passing on the benefit of ITC to him in respect of purchase of Flat no.T4-1004 OAK, in Tower-4 of the Respondent's "Runwal Forests" Project being executed by the Respondent in Mumbai, in spite of the fact that, he was availing ITC at the higher rates during the GST regime which had resulted in benefit of additional ITC to the Respondent and that the latter was also charging GST @18%. This complaint was examined by the Maharashtra State Screening Committee on Anti-Profiteering and referred to the Standing Committee on Anti-Profiteering. The Standing Committee on Anti-Profiteering had examined the above application in its meeting held on 13.12.2018 and forwarded it to the DGAP for detailed investigation, who vide his investigation Report dated 26.06.2019 furnished to this Authority had stated that the Respondent had obtained additional benefit of ITC to the extent of 2.59% of the taxable turnover which he had not passed on to his buyers and he had thus profited an amount of Rs. 10,54,29,234/- in violation of the provisions of Section 171 of the CGST Act, 2017. However, due to the objections raised by the Respondent on the above Report of the Respondent as well as the discrepancies found in the Report, the DGAP was directed to re-investigate the above complaint under Rule 133 (4) of the above Rules vide Interim Order No. 01/2020 dated 01.01.2020.

(ii) The DGAP has re-investigated the matter as per the directions given by this Authority and vide his Report dated 31.08.2020 and as per calculations made in Tables 'B', 'C' and 'D' above has found that:

- a. The Respondent in his Project "Runwal Forests" has 11 Towers comprising Tower-1 to Tower 3 for Affordable Housing (AH) and Tower 4 to Tower 11 for Other than Affordable Housing (OAH) which have 640 units and 1687 units respectively.

- b. The Respondent has booked a total of 1237 units in both the pre GST period and the post GST period upto 31.12.2018.
- c. Out of total units in both the categories, 812 (312 AH + 500 OAH) units were booked in pre-GST period i.e. prior to 1.07.2017 and 425 (231 AH + 194 OAH) units have been booked in the post GST period by the Respondent as detailed in "Table-B" above.
- d. The Respondent had raised demands from a total of 733 homebuyers (403 AH and 330 OAH) in the post-GST period.
- e. Out of such 733 homebuyers, 308 (172 AH and 136 OAH) had booked their units/homes prior to 1.07.2017 and 425 (231 AH and 194 OAH) had booked their homes after 1.07.2017.
- f. Total Turnover for the period from 1.07.2017 to 31.12.2018 was Rs. 387, 58,27,122/- demanded from 733 homebuyers (308+425) i.e. from 308 home-buyers (172 AH + 136 OAH) who booked their units prior to GST implementation and on whom demands had been raised/payment received by the Respondent on or after 1.07.2017 plus demands raised from 425 home buyers (231 AH + 194 OAH) who have booked their units post-GST. From such amount of Rs. 387, 58,27,122/- an amount of Rs. 16,19,67,103/- had been given as upfront discount to 388 homebuyers to pass on the benefit of additional ITC.
- g. Hence total benefit accrued to the Respondent for the period from 01.07.2017 to 31.12.2018 is Rs. 3,71,38,60,019/- (387,58,27,122 - 16,19,67,103/-).
- h. Accordingly, for the purpose of determination of the ratio of input tax credit to the turnover, in the post-GST (July, 2017 to December, 2018) period, turnover (without deduction of the upfront discounts given to 338 homebuyers) from all such 733 home-buyers on whom demands have been raised during the period covered by this investigation/Order i.e. from 1.07.2017 to 31.12.2018 has been taken in the Table 'C' above.

- i. For the purpose of calculation of amount profiteered, demands raised from 308 home-buyers (172 AH + 136 OAH) who booked their units prior to GST implementation and on whom demands had been raised/payment received by the Respondent on or after 1.07.2017 plus demands raised from 87 home buyers (54 AH + 33 OAH) who have booked their units post-GST but to them no ITC was passed on by way of upfront discounts, have been considered.
- j. For Affordable Housing category (172 + 54= 226) it is Rs. 47,48,81,773/- from 226 home-buyers, and in the category Other than Affordable Housing (136 + 33=169), it is Rs. 49,48,51,850/- from 169 home-buyers, totalling Rs. 96,97,33,623/- from across both the categories.
- k. The computation of profiteering is only for the 395 home-buyers across the two categories, excluding those to whom benefit claimed to have already been passed on (338 homebuyers who booked on or after 1.07.2017 and to whom ITC benefit was passed on by way of upfront discount).
- l. The benefit of ITC had been passed on by way of upfront discounts to 338 (177 AH and 161 OAH) home buyers out of the 425 homebuyers who had booked their homes/units after 1.07.2017 and on whom demands have been raised during the period covered by this investigation/Order i.e. from 1.07.2017 to 31.12.2018.
- m. No benefit of ITC has been given to 87 home-buyers (54 AH and 33 OAH) who have booked homes/units on or after 1.07.2017 i.e. post-GST implementation and on whom demands have been raised during the period covered by this investigation/Order i.e. from 1.07.2017 to 31.12.2018.
- n. No benefit of ITC has been given to the 308 home-buyers (172 AH and 136 OAH) who had booked their units before 1.07.2017 i.e. prior to GST implementation, and demands have been raised post-GST, and on whom demands have been raised during the period covered by this investigation/Order i.e. from 1.07.2017 to 31.12.2018.

- o. The ITC as a percentage of the total turnover which was available to the Respondent during the pre-GST period was 01.23% and during the post-GST period this ratio was 1.69%, as per the Table-C mentioned above and therefore, the Respondent has benefited from the additional ITC to the tune of 0.46% (1.69% - 1.23%) i.e. Rs. 49,26,045/- of the total turnover which he was required to pass on to the 395 (308 + 87) eligible flat buyers of this Project.

(iii) The DGAP has computed the ratio of ITC as a percentage of the turnover for the pre GST period and compared it with the ratio of ITC to the turnover for the post GST period and then computed the percentage of benefit of additional ITC which the Respondent is required to pass on to the flat buyers. The above ratios have been computed by the DGAP on the basis of the Service Tax and GST Returns filed by the Respondent, details of saleable and sold area of the project/tower and the ITC Registers maintained by the Respondent for the above said periods and hence, the ratios calculated by the DGAP are based on the factual record submitted by the Respondent and hence they can be relied upon while computing the profiteered amount. The above methodology has been approved by this Authority in all the cases where benefit of ITC is required to be passed on. Therefore, the above methodology is appropriate, logical, reasonable and in consonance with the provisions of Section 171 of the CGST Act, 2017.

(iv) The Applicant No. 1 vide his submissions dated 25.01.2021, has claimed that ITC was Zero on the invoices dated 07.06.2018, 03.12.2018, 14.03.2019 & 12.04.2019. He further stated that the Respondent has not given any interest on discount passed on now (GST was collected @ 18% in advance) whereas the Respondent vide his submissions dated 23.12.2020, has submitted copy of an undertaking signed by the Applicant No. 1 which acknowledged receipt of Rs. 1,17,056/- in full compliance by the Respondent of the provision made under section 171 of the CGST Act 2017. However, the Respondent has in his submissions to the DGAP submitted that, Credit Notes were issued by the Respondent to Applicant No. 1 totalling Rs. 47,277/- as mentioned at para 8(III)(e) supra towards anti-profiteering discounts on invoices issued till March 2019.

The Authority finds that, the Respondent is liable to return to the Applicant the amount of ITC benefit as calculated in the case of the Applicant no. 1 by

the DGAP in its Report dated 31.08.2020 and Annexure 6 thereof as such amount has been calculated after due verification.

(v) The Respondent has claimed vide his submissions dated 07.10.2020 that out of total of 733 customers to whom demands were raised between 01st July 2017 to 31st Dec. 2018, ITC benefits were extended to 338 customers through cost sheets wherein the customers have acknowledged receiving the discount and in respect of balance 395 customers, ITC benefit discounts were passed through credit notes to 381 customers and 14 customers have cancelled their booking and thus are not entitled to ITC benefits. He further claimed that he had profiteered by Rs. 49,26,045/-. However, if the ITC discounts passed on to customers through credit notes were taken into account (amounting to Rs. 2,45,79,594/-) then he would have absorbed excess ITC discount of Rs. 1,96,53,549. This would mean that there was no profiteering by him and he had actually passed discounts in excess of the rate at which ITC benefit was required to be passed on to customers as per the DGAP's Report. Whereas the DGAP vide his clarification dated 29.11.2020 for the submission dated 07.10.2020 of the Respondent, has submitted that it has clearly mentioned in the Report dated 31.08.2020 that in the case of 87 home buyers out of 733 home buyers who have booked units post-GST implementation, no benefit of ITC by way of upfront discount has been given. N

The Respondent could provide only some Cost Sheets in respect of individual home buyers to corroborate his submission of having passed on the ITC benefits to his customers. Such Cost Sheets have been considered by the DGAP wherein upfront discounts have been accorded. Where no such reliable and verifiable evidence has been submitted by the Respondent, the DGAP has calculated the profiteered amount homebuyer wise and this Authority relies on such calculation.

The Authority finds that, in relation to 308 homebuyers who had booked their units/flats prior to 1.07.2017, the Respondent is liable to return the amount of ITC benefit as calculated in the case of each such homebuyer by the DGAP in its Report dated 31.08.2020 and Annexure 6 thereof. The Authority finds that, in relation to 87 homebuyers who had booked their units/flats on or after 1.07.2017, the Respondent is liable to return the amount of ITC benefit as calculated in the case of each such homebuyer by

the DGAP in its Report dated 31.08.2020 and Annexure 6 thereof as no upfront discount to pass on benefit of ITC was given to such number of homebuyers.

(vi) Therefore, the Authority holds that the Respondent has not passed on the benefit of ITC to all the eligible home buyers under the provisions of section 171 of the CGST Act 2017.

21. The Authority finds that the additional benefit of ITC availed by the Respondent during the period July 2017 to December 2018 which is required to be passed on to his home buyers, has been correctly calculated by the DGAP which is based on the factual records/information furnished by the Respondent, and according to the Methodology which has been approved by this Authority in all the cases where benefit of ITC is required to be passed on under the provisions of Section 171 of the CGST Act, 2017.

22. In view of the above facts, the Authority finds that, the Respondent has benefited from the additional ITC to the extent of 0.46% of the turnover during the period from 01.07.2017 to 31.12.2018 and hence the provisions of Section 171 of the CGST Act, 2017 have been contravened by the Respondent as he has not passed on the above benefit to his customers. The Authority determines that, the Respondent has realized an additional amount of **Rs. 3,763/-** which includes both the profiteered amount @ 0.46% of the taxable amount (base price) and 12% GST on the said profiteered amount from the **Applicant No. 1**. The Authority determines that, the Respondent has realized an additional amount of Rs. 49,22,281/- which includes both the profiteered amount @ 0.46% of the taxable amount (base price) and GST @ 8% / 12% on the said profiteered amount from the 394 flat buyers other than the Applicant No. 1.

The Authority determines that, the Respondent has profiteered an amount of **Rs. 49,26,054/-** inclusive of GST @ 8% / 12% as calculated in the aforesaid Report dated 31.08.2020 for the stated period. Hence, the Authority holds that the Respondent is required to pass on the benefit of ITC along with the interest @ 18% per annum from the dates from which the above amount was collected by him from them till the payment is made as prescribed under Rule 133(3)(b) of the CGST Rules, 2017, within a period of 3 months from the date of this Order as per the details mentioned in Annexure-A to this Order.

Accordingly, this Authority under Rule 133 (1) (a) of the CGST Rules, 2017 orders that the Respondent shall reduce the prices to be realized from the buyers of the flats of the above Project commensurate with the benefit of ITC received by him as has been detailed above.

23. The present investigation has been conducted up to 31.12.2018 only. However, the Respondent has not obtained the Completion Certificate (CC) till that date. Therefore, he is liable to pass on the benefit of ITC which would become available to him till the date of issue of CC. Accordingly, the concerned jurisdictional Commissioner CGST/SGST are directed to ensure that the Respondent passes on the benefit of ITC to the eligible flat buyers as per the methodology approved by this Authority in the present case and submit report to this Authority through the DGAP. The Applicant No.1 or any other flat buyer shall also be at liberty to file complaint against the Respondent before the Maharashtra State Screening Committee in case the remaining benefit of ITC is not passed on to them.

24. The Authority finds that vide Section 112 of the Finance Act, 2019 specific penalty provisions have been added for violation of the provisions of Section 171 (1) which have come in to force w.e.f. 01.01.2020, by inserting Section 171 (3A). Since, no penalty provisions were in existence between the period from **01.07.2017 to 31.12.2018** i.e. the period of the present investigation for which the profited amount has been calculated and the Respondent is found to have violated the provisions of Section 171 (1), the penalty prescribed under Section 171 (3A) cannot be imposed on the Respondent for profiteering done during such period. ✓

25. This Authority as per Rule 136 of the CGST Rules 2017 directs the Commissioners of CGST/SGST, Maharashtra to monitor compliance of this Order, under the supervision of the DGAP, by ensuring that the amount profited by the Respondent, is passed along with interest @ 18% as prescribed, to all the eligible buyers as ordered by the Authority. In this regard an advertisement of appropriate size to be visible to the public may also be published in minimum of two local Newspapers/vernacular press in Hindi/English/local language with the details i.e. Name of builder (Respondent) – M/s Wheelabrator Alloy Castings Pvt. Ltd. Project- "Runwal Forests", Location- Mumbai, Maharashtra and amount of profiteering i.e. Rs. 49,26,054/- so that the concerned homebuyers can claim the benefit of ITC if not passed on. Homebuyers 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 may also be advertised through the said advertisement. A report in compliance of this Order shall be submitted to this Authority and the DGAP, by the Commissioners CGST /SGST within a period of 4 months from the date of this Order.

26. In view of the prevailing Covid 19 pandemic, the Hon'ble Supreme Court had by its Order dated 10.01.2022 passed in M.A. no. 21/2022 in M.A. no. 665/2021 in Suo Moto Writ Petition (C) No. 3 of 2020 ordered as under:-

(I). 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.

(II). Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022.

(III). In case where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event, the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.

(IV). It is further clarified that the period from 15.03.2020 till 28.02.2022 shall stand excluded in computing the period under Section 23(4) and 29A of the Arbitration and Conciliation Act 1996, Section 12A of the Commercial Courts Act 2015 and provisos (b) and (c) of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period (s) of limitation for instituting proceedings over limits (within which the court or tribunal can condone delay) and termination of proceedings.

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

27. A copy each of this order be supplied, free of cost, to the DGAP the Applicants, the Respondent, Commissioners CGST/SGST, Mumbai/Maharashtra,

the Secretary (Town and Country Planning) Govt. of Maharashtra and Maharashtra RERA for necessary action. File be consigned after completion.

Annexed:- Annexure 'A' in Pages 1 to 04.

Sd-
(Amand Shah)
Technical Member &
Chairman



Sd-
(Pramod Kumar Singh)
Technical Member

Sd-
(Hitesh Shah)
Technical Member

Certified copy


(Dinesh Meena)
Secretary, NAA

File No. 22011/NAA/194/Wheelabrator/2020 17540 — Date:-19.07.2022

Copy to:-

1. M/s Wheelabrator Alloy Casting Pvt. Ltd., Runwal Forest near Mangatram Petrol Pump, LBS Marg, Kanjurmarg (W), Mumbai-400078.
2. Sh. Kishore Arjandas Udasi, Flat No. 501, Mahavir Residency, Nr. Balrajesh Temple, LBS Marg, Mulund (W) Mumbai-400080.
3. Director General of Anti profiteering, Central Board of Indirect Taxes & Customs, 2nd Floor, Bhai Vir Singh Sahitya Sadn, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.
4. The Chief Commissioner CGST Zone Mumbai, GST Bhavan, 115, M.K. Road, Opp. Churchgate Station, Mumbai-400020.
5. The Additional Commissioner, State Tax, Maharashtra, 4th Floor, GST Bhawan, Yerwada, Airport Road, Pune - 411 006.
6. Maharashtra Real Estate Regulatory Authority, 3rd Floor, A-Wing, Slum Rehabilitation Authority, Administrative Building, Anant Kanekar Marg, Bandra (E), Mumbai 400051.
7. Secretary, Urban Development Dept. Government of Maharashtra, Room No. 423 (Main), Mumbai 400 032,
8. NAA Website.
9. Guard File.

S. No. (as per home buyers' list)	Customer Name	Tower no.	Flat no.	RERA Carpet Area	Net gross inclusive of go-rate Discount	Applicable Tax (per installment)	Turnover of home buyers to whom profiteered amount to be passed on	% of Profiteered amount which to be passed on@	Total Profiteered Amount to be passed on (including GST)
1	KOLLE, SARACHANDRAN	T2	T2-0204	471	4,510,000	548,400	5,118,400	0.00	23,940
2	KAPLEJAM BHATT	T1	T1-0958	471	5,150,250	649,600	5,770,261	0.45	40,240
3	KETTER FERNANDES	T1	T1-0962	471	4,039,000	504,900	4,543,900	0.00	23,467
4	GOPAL GAYAKH	T1	T1-2004	471	4,557,600	555,317	5,112,917	0.48	23,641
5	SAJO CHARIK	T1	T1-2009	471	4,155,000	504,400	4,659,400	0.48	22,629
6	SIRMA PAVAN	T1	T1-0962	471	4,199,625	511,730	4,711,355	0.48	24,528
7	ABHISHEK CHAUDHARI	T1	T1-2004	471	4,155,000	504,400	4,659,400	0.48	23,467
8	MAKORAMA SINGH	T1	T1-2001	471	4,705,220	575,450	5,280,670	0.00	23,519
9	SHASHWAN JAIN	T1	T1-2002	471	4,180,000	504,400	4,684,400	0.00	3,300
10	DAHLI CHALKE	T1	T1-2002	471	4,180,000	504,400	4,684,400	0.48	42,388
11	SHRIHARI WARRIOR	T1	T1-0962	471	4,491,875	548,400	5,040,275	0.48	40,7
12	SURESH SHIRSI	T1	T1-2001	471	4,222,000	511,730	4,733,730	0.48	42,264
13	Manender Mahinda	T1	T1-2004	471	4,705,220	575,450	5,280,670	0.48	43,899
14	SURESH SHIRSI	T1	T1-2001	471	4,222,000	511,730	4,733,730	0.48	43,284
15	SURESH SHIRSI	T1	T1-2001	471	4,222,000	511,730	4,733,730	0.48	38,893
16	SHRUTI KALIA SACHAN	T1	T1-2002	471	4,705,220	575,450	5,280,670	0.48	35,711
17	GABRIEL DAMODARAN	T1	T1-2009	471	4,180,000	504,400	4,684,400	0.48	40,8
18	Ashish Khan	T1	T1-2001	471	4,180,000	504,400	4,684,400	0.48	38,329
19	ADARSH KISHORJI	T1	T1-2002	471	4,222,000	511,730	4,733,730	0.48	42,1
20	SHRUTI KALIA SACHAN	T1	T1-2002	471	4,705,220	575,450	5,280,670	0.48	38,329
21	VEDHA PANDHAR	T1	T1-2002	471	4,222,000	511,730	4,733,730	0.48	27,835
22	MOHANDAS GUJRAN	T1	T1-0102	471	4,427,600	531,300	4,958,900	0.48	34,000
23	PANDHAR SURESHWAR	T1	T1-0004	471	4,899,000	593,200	5,492,200	0.48	34,000
24	SURESH SHIRSI	T1	T1-0962	471	4,427,600	531,300	4,958,900	0.48	25,405
25	SHASHIRAO ANAND	T1	T1-2004	471	4,222,000	511,730	4,733,730	0.48	25,220
26	SURESH SHIRSI	T1	T1-2001	471	4,222,000	511,730	4,733,730	0.48	24,396
27	SHRUTI KALIA SACHAN	T1	T1-2002	471	4,705,220	575,450	5,280,670	0.48	27,835
28	SHRUTI KALIA SACHAN	T1	T1-2002	471	4,705,220	575,450	5,280,670	0.48	26,725
29	SHRUTI KALIA SACHAN	T1	T1-2002	471	4,705,220	575,450	5,280,670	0.48	42,328
30	SHRUTI KALIA SACHAN	T1	T1-2002	471	4,705,220	575,450	5,280,670	0.48	38,329
31	SHRUTI KALIA SACHAN	T1	T1-2002	471	4,705,220	575,450	5,280,670	0.48	43,284
32	SHRUTI KALIA SACHAN	T1	T1-2002	471	4,705,220	575,450	5,280,670	0.48	43,284
33	SHRUTI KALIA SACHAN	T1	T1-2002	471	4,705,220	575,450	5,280,670	0.48	43,284
34	SHRUTI KALIA SACHAN	T1	T1-2002	471	4,705,220	575,450	5,280,670	0.48	43,284
35	SHRUTI KALIA SACHAN	T1	T1-2002	471	4,705,220	575,450	5,280,670	0.48	43,284
36	SHRUTI KALIA SACHAN	T1	T1-2002	471	4,705,220	575,450	5,280,670	0.48	43,284
37	SHRUTI KALIA SACHAN	T1	T1-2002	471	4,705,220	575,450	5,280,670	0.48	43,284
38	SHRUTI KALIA SACHAN	T1	T1-2002	471	4,705,220	575,450	5,280,670	0.48	43,284
39	SHRUTI KALIA SACHAN	T1	T1-2002	471	4,705,220	575,450	5,280,670	0.48	43,284
40	SHRUTI KALIA SACHAN	T1	T1-2002	471	4,705,220	575,450	5,280,670	0.48	43,284
41	SHRUTI KALIA SACHAN	T1	T1-2002	471	4,705,220	575,450	5,280,670	0.48	43,284
42	SHRUTI KALIA SACHAN	T1	T1-2002	471	4,705,220	575,450	5,280,670	0.48	43,284
43	SHRUTI KALIA SACHAN	T1	T1-2002	471	4,705,220	575,450	5,280,670	0.48	43,284
44	SHRUTI KALIA SACHAN	T1	T1-2002	471	4,705,220	575,450	5,280,670	0.48	43,284
45	SHRUTI KALIA SACHAN	T1	T1-2002	471	4,705,220	575,450	5,280,670	0.48	43,284
46	SHRUTI KALIA SACHAN	T1	T1-2002	471	4,705,220	575,450	5,280,670	0.48	43,284
47	SHRUTI KALIA SACHAN	T1	T1-2002	471	4,705,220	575,450	5,280,670	0.48	43,284
48	SHRUTI KALIA SACHAN	T1	T1-2002	471	4,705,220	575,450	5,280,670	0.48	43,284
49	SHRUTI KALIA SACHAN	T1	T1-2002	471	4,705,220	575,450	5,280,670	0.48	43,284
50	SHRUTI KALIA SACHAN	T1	T1-2002	471	4,705,220	575,450	5,280,670	0.48	43,284
51	SHRUTI KALIA SACHAN	T1	T1-2002	471	4,705,220	575,450	5,280,670	0.48	43,284
52	SHRUTI KALIA SACHAN	T1	T1-2002	471	4,705,220	575,450	5,280,670	0.48	43,284
53	SHRUTI KALIA SACHAN	T1	T1-2002	471	4,705,220	575,450	5,280,670	0.48	43,284
54	SHRUTI KALIA SACHAN	T1	T1-2002	471	4,705,220	575,450	5,280,670	0.48	43,284
55	SHRUTI KALIA SACHAN	T1	T1-2002	471	4,705,220	575,450	5,280,670	0.48	43,284
56	SHRUTI KALIA SACHAN	T1	T1-2002	471	4,705,220	575,450	5,280,670	0.48	43,284
57	SHRUTI KALIA SACHAN	T1	T1-2002	471	4,705,220	575,450	5,280,670	0.48	43,284
58	SHRUTI KALIA SACHAN	T1	T1-2002	471	4,705,220	575,450	5,280,670	0.48	43,284
59	SHRUTI KALIA SACHAN	T1	T1-2002	471	4,705,220	575,450	5,280,670	0.48	43,284
60	SHRUTI KALIA SACHAN	T1	T1-2002	471	4,705,220	575,450	5,280,670	0.48	43,284

ANNEXURE-A

(PAGE-1 to 4)

S. No. (as per home buyers' list)	Customer Name	Tower no.	Flat no.	RESA Carpet Area	Net gross inclusive of pro-rata Discount	Applicable Tax (per installment)	Turnover of Home buyers to whom profiteered amount to be passed on	% of Profiteered amount which to be passed on@	Total Profiteered Amount to be passed on (including GST)
363	RAJESH MAHESHWAR	74	74-0903	661	703,403	84,638	795,123	0.46	3,625
364	DEBAM PATIL	74	74-0904	661	717,870	86,138	804,008	0.46	3,684
365	IMTAJ SHAIKH	74	74-0703	661	746,204	89,524	835,728	0.46	3,873
366	POOJA JOHI	74	74-0704	661	771,116	92,536	863,652	0.46	3,974
367	VIJAY NAR	74	74-0801	661	704,222	86,302	790,524	0.46	3,731
368	SACHIN SHETTY	74	74-0802	661	711,717	85,410	797,127	0.46	3,687
369	SURENDRA BHARDARI	74	74-0803	661	736,227	88,410	824,637	0.46	3,794
370	SANIK SHAIKH	74	74-0804	661	687,750	82,134	769,884	0.46	3,543
371	ROHAN ZARAPKAR	74	74-0901	661	712,116	86,256	798,372	0.46	3,676
372	NAVIN KOTIAN	74	74-0902	661	714,641	86,754	801,395	0.46	3,747
373	SUNET SAPOOR	74	74-0904	661	727,346	87,284	814,630	0.46	3,747
374	SNEHA BAR	74	74-1001	661	742,980	89,120	832,100	0.46	3,828
375	ANUSHA KHANNA	74	74-1001	661	698,734	83,810	782,544	0.46	3,671
376	EDDIAMR KHANNA	74	74-1002	661	764,870	91,754	856,624	0.46	3,888
377	SHRUTI UDANI	74	74-0904	661	736,413	88,688	825,101	0.46	3,763
378	VAIDANA KUNTEWAR	74	74-1003	713	730,660	87,482	818,142	0.46	3,693
379	SHWETA KUNTEWAR	74	74-1103	661	773,354	92,134	865,488	0.46	3,951
380	B B MALHOTRA	74	74-1103	661	738,011	88,514	826,525	0.46	3,788
381	RAJESH POKHAN	74	74-1201	661	721,096	86,516	807,612	0.46	3,718
382	VIJAY ANAND	74	74-1104	661	836,110	100,010	936,120	0.46	4,319
383	SHRUTI POKHAN	74	74-1105	713	811,317	97,236	908,553	0.46	4,179
384	RAJUL KUTWAR	74	74-1201	661	736,727	88,410	825,137	0.46	3,788
385	ANANDHAR RAMASWAMY	74	74-1202	661	734,222	88,910	823,132	0.46	3,761
386	SHRUTI UPASANI	74	74-1203	713	1,008,326	121,110	1,129,436	0.46	5,200
387	SIRIVAS MOOKJEDI	74	74-1301	661	739,854	88,784	828,638	0.46	3,811
388	SHASHANK GOME	74	74-0703	713	616,617	73,398	690,015	0.46	3,177
389	SAJAY BANDA	74	74-1301	661	760,401	90,841	851,242	0.46	4,024
390	ANURAG SRINIVASAN	74	74-1305	713	1,014,211	121,741	1,135,952	0.46	5,227
391	M DANESH	74	74-1401	661	783,621	94,016	877,637	0.46	4,037
392	SHRUTI DAVARE	74	74-1404	661	806,619	97,040	903,659	0.46	4,186
393	NEELESH BHARDWAJ	74	74-1405	713	896,160	107,390	1,003,550	0.46	4,609
394	ARCHANA PATIL	74	74-1501	661	790,126	95,536	885,662	0.46	4,032
395	ANIL SHETTY	74	74-1502	661	731,601	88,034	819,635	0.46	3,788
396	HETESH TEJWALA	74	74-1503	661	771,114	92,116	863,230	0.46	3,973
397	SAHIL SHARMA	74	74-1504	661	746,126	89,534	835,660	0.46	3,844
398	SHANDESH DEKAR	74	74-1505	713	880,617	105,667	986,284	0.46	4,337
399	IRFAN SHAIKH	74	74-1505	713	861,671	102,828	964,499	0.46	4,209
400	SHYAM SINGH	74	74-1601	661	803,210	96,122	899,332	0.46	4,109
401	LAHARI NARAYANAR	74	74-1602	661	736,727	88,410	825,137	0.46	3,788
402	DANIEL MURAR	74	74-1604	661	749,131	89,710	838,841	0.46	3,860
403	SURAJESH PASORIA	74	74-1605	713	1,382,320	163,616	1,545,936	0.46	7,064
404	SHEETA DAVAR	74	74-1606	713	840,101	101,904	942,005	0.46	4,175
405	ANISH SAHAY	74	74-1701	661	800,405	96,916	897,321	0.46	4,064
406	SHRUTAM SHARMA	74	74-1702	661	803,611	97,016	900,627	0.46	4,166
407	SUNIL KOPIN	74	74-1703	661	738,673	88,766	827,439	0.46	3,814
408	PAVAN SRIVASTAVA	74	74-1704	661	804,000	96,700	900,700	0.46	4,056
409	JAYU SHAIKH	74	74-1801	661	767,660	91,160	858,820	0.46	3,957
410	ALPESH VIJAY	74	74-1802	661	747,980	89,100	837,080	0.46	3,828
411	SHRI HARSHAN	74	74-1803	661	751,695	90,200	841,895	0.46	3,932
412	VIJAY KANTHAN	74	74-1804	661	780,495	93,695	874,190	0.46	4,021
413	ZUBIN FUSTANA	74	74-1805	713	836,074	100,730	936,804	0.46	4,410
414	PULLA SHARMA	74	74-1901	661	703,621	84,016	787,637	0.46	3,697
415	CHANDRASEKHAR RAMASWAMY	74	74-1902	661	758,611	91,014	849,625	0.46	3,904
416	NIKOPUR GUARD	74	74-1903	661	819,144	98,140	917,284	0.46	4,359
417	Apparish Raju	74	74-1904	661	754,621	91,014	845,635	0.46	3,908
418	SANIL SHARMA	74	74-2001	661	814,101	97,616	911,717	0.46	4,304
419	SUNIL SHARMA	74	74-2002	661	764,101	91,612	855,713	0.46	4,034
420	RAJUL KRISHNAN	74	74-2003	661	862,600	102,920	965,520	0.46	4,507
421	HEMANTH SHARMA	74	74-2004	661	746,210	89,614	835,824	0.46	3,968
422	SHANDESH DEKAR	74	74-2005	713	925,049	111,092	1,036,141	0.46	4,745

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