

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

Case No.	48/2022
Date of Institution	23.02.2021
Date of Order	26.07.2022

In the matter of:

1. **Sh. Dinesh Jain & Ms. Madhu Jain**, B-1601, Sanghvi Solitaire, M.G Road, Corner of 9th carter road, Borivali East, Mumbai-400066.
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

1. **M/s Sanghvi Premises Pvt. Ltd.**, 401, Rangoli Time Complex, Adjoining Premier Theater, Dr. B.A Road, Parel (E), Mumbai-400012

Respondent

Quorum:-

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



Present :-

1. Sh. Dinesh Jain for the Applicant No. 1
2. Sh. Manoj Singh for the Applicant No. 2
3. Sh. Yashwant Gupta, Sh. Piyush, Advocate & Authorised Representative for the Respondent.

ORDER

1. The Present report dated 23.02.2021 had been received by the Authority from the Applicant No. 2, i.e. the Director General of Anti-Profiteering after a detailed investigation under Rule 129(6) of the CGST Rules, 2017. The brief facts of the case was that the Standing Committee on Anti-profiteering, received an Application under Rule 128 of the CGST Rules, 2017 (hereinafter referred to as "**the Rules**"), filed by Applicant No. 1, alleging profiteering in respect of construction service supplied by the Respondent. The Applicant No. 1 alleged that the Respondent had not passed on the benefit of ITC to him by way of commensurate reduction in the price of the Flat No. B-1601 purchased from the Respondent in the Respondent's project "Sanghvi Solitaire", situated at Borivali, Maharashtra in terms of Section 171 of the CGST Act, 2017.

2. The DGAP in his Investigation Report dated 23.02.2021, has inter-alia, submitted as under:-

2.1 The aforesaid application was examined by the Standing Committee on Anti-profiteering, in his meeting held on 21.10.2020, the minutes of which were received in the DGAP on 11.11.2020, 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 ITC had been passed on by the Respondent to the Applicant No. 1 in respect of construction service supplied by the Respondent.

2.2 On receipt of the reference from the Standing Committee on Anti-profiteering, a Notice was issued to the Respondent on 07.12.2020, calling upon the Respondent to reply as to whether he admit that the benefit of ITC had not been passed on to the Applicant No. 1 by way of commensurate reduction in price 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 the supporting documents. Vide the said Notice, the Respondent was also given an opportunity to inspect the non-confidential evidences/information furnished by the Applicant No. 1

during the period 15.12.2020 to 16.12.2020. However, the Respondent did not avail of this opportunity.

- 2.3 Vide e-mail dated 11.02.2021, the Applicant No. 1 was afforded an opportunity to inspect the non-confidential documents/reply furnished by the Respondent on 16.02.2021 or 17.02.2021. The Applicant No. 1 vide e-mail dated 17.02.2021 stated that he was hospitalized due to heart problem and requested to share documents or to share any address of Authority's office which was in Mumbai. The period covered by the current investigation was from 01.07.2017 to 30.10.2020.
- 2.4 The time limit to complete the investigation was 10.05.2021.
- 2.5 In response to the Notice dated 07.12.2020, the Respondent submitted his reply vide letters and e-mails dated 16.12.2020, 23.12.2020, 15.01.2021, 25.01.2021 and 02.02.2021. The important submissions of the Respondent are as under: -
- a. The above investigation had been initiated based on application filed to Authority under Rule 128 of CGST Rules 2017 by his customer Sh. Dinesh Jain & Ms. Madhu Jain (hereinafter referred to as "Complainant") who had booked Flat No. B-1601 in his Project Sanghvi Solitaire.
- b. He had sold Flat B-1601 and measuring 916 Square Feet (RERA Carpet) to Sh. Dinesh Jain & Ms. Madhu Jain vide his Agreement for sale dated 18th June 2018 for Rs. 1,66,23,480/-.

Summary of above was showcased below:

Rate of GST	Flat Cost	GST
12% with ITC	1,57,92,306	18,95,078
5% rate without ITC	8,31,174	41,558
Total	1,66,23,480	19,36,636

- c. The flat was sold to the complainant on 18.06.2018. GST Law was introduced with effect from 01.07.2017 and had been subject matter of discussion amongst the various Business Associations, Professional Associations, Government Bodies and other Stakeholders. The passing of benefit which might had arisen due to introduction of GST was already discussed in the various newspapers and extensively promoted by the GST Department.

- d. The GST Department has, in fact, promoted the GST Law by stating that there would be removal of cascading effect in the tax structure which was present before introduction of GST, and therefore, the customers would be benefited due to which the adequate safeguard provision were introduced to cover any benefit that accrues due to change in tax legislation to the assessee should be passed on the customers.
- e. The Complainant who bought the flat in June, 2018 which was much after the introduction of GST and being completely aware, while finalizing the price of the said flat that the adequate tax benefit, if any, had been already considered in the price that was offered to him and after considering the same he agreed to buy the flat.
- f. Nothing stopped him at the time of buying the flat or entering into the Agreement in June, 2018 to ask further reliefs, if any, which was being sought by the frivolous complaint, filed with an intention to build pressure.
- g. The complainant was well aware that price of the flat was decided after considering the ITC benefit if any available to the builder and which he agreed while signing the Agreement and therefore, there was no question of any further additional benefit to be given which was already passed onto him in the agreed price.
- h. The complainant while entering into agreement was aware that GST was already in force since 11 months and GST applicable at that time i.e. 12% (after 1/3rd deduction from 18%) was payable separately on agreed price. The tax benefit if any by way of ITC was already passed on by way of appropriate reduction in the price that was offered.
- i. The project had travelled far from VAT & Service Tax Regime to GST Regime of effective 12% rate with ITC and then to reduced rate at 5% without ITC. Further in October 2019, he had received Occupation certificate for his project on which date around 42% of his inventory were lying unsold.

- j. From 01st April 2019 he had opted for new regime for his said project where he was not able to claim ITC after 01st April 2019 & thereupon he was liable to reverse ITC to the tune of Rs. 53.83 Lakh amongst that, which he had claimed in earlier period. Further in Month of October 2019, he had received Occupation Certificate for which Reversal comes to Rs. 35,42,378/- which constitutes 42% of Net Credit claimed in project history.
- k. Hence from above it could be appreciated that only for the small span of 18 months he was getting GST ITC which was later on reversed on 01st April 2019 & also he was liable to reverse ITC on receipt of OC.
- l. After all the above proportionate reversals in GST Regime he had only taken Net GST credit of Rs. 49,25,599/- which was quite less compared to his project completion percentage proportionate.

Proportionality explained below:

Particulars	Period in Months	Total Net Percentage Completion for the period	Credit availed
Pre-GST Regime (April 2016 to June 2017)	15	16.00	27,73,302
Post GST Regime (July 2017 to October 2019)	28	32.00	49,25,599
Proportionate Reasonable Credit based on stage of Completion in GST Regime compared to Pre-GST Regime			55,46,604
(27,73,302/16*32(Calculation for above))			
Diminished Benefit in ITC			(6,21,005)

- m. Further due to introduction of GST he was required to reverse his EC, SHEC & KKC credit availed unutilized in Service Tax regime.

- n. Further from April 2019 i.e. reduced rate without ITC, there were various conditions imposed on builder which leads to increase in construction cost i.e. 80% of all Inputs & 100% of Cement should be from GST registered dealer wherein all GST adds up to construction cost wherein builder was not left with a choice to purchase even small inputs from unregistered dealers.
- o. M/s Sanghvi Premises Pvt. Ltd was in business of Land Development which had four promoters and each promoter had his respective projects in the company wherein separate accounts was prepared from each promoter's group. Till April 2019 all the promoters had single GST number 27AAACL0598D1ZM (herein after referred to as "Old number").
- p. From April 2019 three new numbers were taken amongst which one 27AAACL0598D3ZK (herein after referred to as "new number") were of Mr. Rakesh Sanghvi (Promoter) which had Solitaire project in it.
- 2.6 Vide the aforementioned letters, the Respondent submitted the following documents/information:
- (a) Brief Profile of the Respondent.
 - (b) Copies of GSTR-1 returns for the period July, 2017 to August, 2020 for old GST number.
 - (c) Copies of GSTR-3B returns for the period July, 2017 to August, 2020 for old GST number.
 - (d) GSTR-9 for old GST number for FY 2017-18.
 - (e) Copies of GSTR-1 returns for the period April, 2019 to September, 2020 for new GST number.
 - (f) Copies of GSTR-3B returns for the period April, 2019 to September, 2020 for new GST number.
 - (g) TRAN-1 for the period July, 2017 to December, 2017.
 - (h) Electronic Credit Ledger for the period July, 2017 to December, 2019 for old GST number.
 - (i) Electronic Credit Ledger for the period April, 2019 to December, 2020 for new GST number.

- (j) VAT Audit Report & Service Tax returns for the period April, 2016 to June, 2017.
- (k) Copy of all tax invoices issued to the Applicant No. 1 along with agreement.
- (l) Details of Applicable tax rates, Pre-GST and Post-GST.
- (m) Financials of the Respondent for the FY 2016-17, 2017-18 & 2018-19.
- (n) Documents explaining % completion of project on 31.03.2016, 30.06.2017 & OC copy along with project Summary as on date explaining 100% completion.
- (o) Development agreement. N
- (p) Status of the project as on 30.11.2020.
- (q) Details of VAT, Service Tax, ITC of VAT, CENVAT credit for the period April, 2016 to June, 2017 and output GST and ITC of GST for the period July, 2017 to September, 2019 for the project "Sanghvi Solitaire" in the given format.
- (r) List of home buyers in the project "Sanghvi Solitaire".

2.7 In the Notice dated 07.12.2020, the Respondent were informed that if any information/documents were provided on confidential basis, in terms of Rule 130 of the Rules, a non-confidential summary of such information/documents was required to be furnished. However, the Respondent did not submit any summary.

2.8 On the basis of the subject application, various replies of the Respondent/Applicant No. 1 and the documents/evidences on record had been carefully examined. The main issues for determination are:-

- (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.

2.9 Another relevant point in this regard was 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 II, 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 had 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 was under construction but not sold was provisional ITC which might be required to be reversed by the Respondent, if such units remain 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 might be prescribed and shall include supplies on which the recipient was 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.

- 2.10 To verify the correctness of the statement of the Respondent with respect to RERA Registration claimed by the Respondent, the official website of Maharashtra Real Estate Regulatory Authority was visited and it was observed that there were 12 registrations in the Name of M/s Sanghvi Premises Pvt Ltd., Maharashtra. It appears that out of 12 projects the complaint pertains to the Project "**Sanghvi Solitaire**". Further, it could be seen that the Project "**Sanghvi Solitaire**" was one among 12 projects being constructed by the Respondent.

- 2.11 As regards the contention of the Respondent that the price which was offered in GST era, the commensurate reduction on account of change in tax structure/ITC benefit was extended to the Applicant No. 1 was not reflected in any of the documents like sale agreement submitted by them. Hence, this argument cannot be accepted.
- 2.12 The contention of the Respondent that he had opted for payment of tax @5% without ITC from 01.04.2019 was correct as the Respondent was charging 5% tax from 01.04.2019 and therefore the investigation period had been limited upto 31.03.2019. As regards the reversal of ITC on account of Occupation Certificate, it was informed that the reversal pertains to unsold units which do not form the part of profiteering.
- 2.13 The contention of the Respondent that from April, 2019, three new GSTIN numbers were taken had no relevance as the period of investigation was limited upto March, 2019 and therefore the liability had been fixed upon the Respondent with GSTIN number 27AAACL0598D1ZM.
- 2.14 As regards the allegation of profiteering, it was observed that prior to 01.07.2017 i.e., before the GST was introduced, the Respondent was eligible to avail credit of Service Tax paid on the input services (CENVAT credit of Central Excise duty was not available) in respect of the flats for the project "Sanghvi Solitaire" sold by them. Moreover, the Respondent had not claimed the benefit of credit of VAT paid on the inputs. Further, post-GST, the Respondent could avail ITC of GST paid on all the inputs and input services. From the data submitted by the Respondent covering the period April, 2016 to 31.03.2019, the details of the ITC availed by them, his turnover from the project "Sanghvi Solitaire" and the ratio of ITC to turnover, during the pre-GST (April, 2016 to June, 2017) and post-GST (July, 2017 to 31.03.2019) periods, was furnished in table-A below.

Sr. No.	Particulars	Total (Pre-GST) April, 2016 to June, 2017	Turnover (July, 2017 to March, 2019)
1	CENVAT of Service Tax Paid on Input Services used for flats (A)	27,73,302	-
2	Input Tax Credit of VAT Paid on Purchase of Inputs (B)	-	-
3	Total CENVAT/Input Tax Credit Available (C) (A+B)	27,73,302	-
4	Input Tax Credit of GST Availed (D)	-	1,03,72,468
5	Turnover for Flats as per Home Buyers List (E)	12,28,57,236	8,24,96,944
6	Total Saleable Area (in SQF) (F)	23,972	23,972
7	Total Sold Area (in SQF) relevant to turnover (G)	10,660	13,088
8	Relevant ITC [(H) - (B)*(G)/(F)]	12,33,247	56,63,059
Ratio of ITC Post-GST [(I)=(H)/(E)]		1.00%	6.86%

2.15 From the above table-'A', it was clear that the ITC as a percentage of the turnover that was available to the Respondent during the pre-GST period (April, 2016 to June, 2017) was 1.00% and during the post-GST period (July, 2017 to March, 2019), it was 6.86% for Project "Sanghvi Solitaire". Though the investigation period was July, 2017 to November, 2020, the period upto March, 2019 instead of November, 2020 had been considered for computation of the profiteering because the Respondent opted for new scheme issued vide Notification 03/2019-Central Tax (Rate) dated 29.03.2019. In terms of this Notification, the Respondent was required to pay GST @ 5% without taking/availing the benefit of Input Tax Credit. Thus, the Respondent was not eligible to avail the ITC w.e.f. 01.04.2019. Since, there was no benefit of ITC to the Respondent w.e.f. 01.04.2019 profiteering on account of additional ITC benefit cannot be attributed after 01.04.2019. This clearly confirms that post-GST, the Respondent had benefited from additional ITC to the tune of 5.86% [6.86% (-) 1.00%] of the turnover upto 31.03.2019 only.

2.16 The Central Government, on the recommendation of the GST Council, had levied 18% GST (effective rate was 12 % in view of 1/3rd abatement for land value) on construction service, vide Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017. The effective GST rate was 12% for flats.

Accordingly, 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-GST and post-GST periods as well as the turnover, the recalibrated base price and the excess realization (profiteering) during the post-GST period, was tabulated in table-B below :-

Table-B

Sr. No.	Particulars		
1	Period	A	July, 2017 to March, 2019
2	Output GST rate (%)	B	12
3	Ratio of CENVAT credit/ ITC to Total Turnover as per table - 'B' above (%)	C	6.86%/1.00%
4	Increase in ITC availed post-GST (%)	D= 6.86% less 1.00%	5.86%
5	<u>Analysis of Increase in input tax credit:</u>		
6	Base Price raised during July, 2017 to March, 2019 (Rs.)	E	8,24,96,944
7	GST raised over Base Price (Rs.)	F= E*B	98,99,633
8	Total Demand raised	G= E+F	9,23,96,577
9	Recalibrated Base Price	H= E*(1-D) or 94.14% of E	7,76,62,623
10	GST @12%	I= H*B	93,19,515
11	Commensurate demand price	J= H+I	8,69,82,138
12	Excess Collection of Demand or Profiteering Amount	K= G-J	54,14,439

2.17 From table-'B' above, it was clear that the additional ITC of 5.86% of the turnover should had resulted in the commensurate reduction in the base price as well as cum-tax price. Therefore, in terms of Section 171 of the CGST Act, 2017, the benefit of such additional ITC was required to be passed on to the recipients.

2.18 The DGAP in his report had mentioned that it was evident from the above calculation explained in Table-B on the basis of the aforesaid CENVAT/input tax credit availability pre and post-GST and the details of demand raised by the Respondent from the Applicant and other home-buyers in respect of the units booked by the Respondent as on 31.03.2019, the benefit of ITC that needed to be passed on by the Respondent to the buyers of flats comes to **Rs. 54,14,439/-**

which included 12% GST on the base amount of Rs. 48,34,321/-. The Homebuyers of the flats/unit no. wise break-up of this amount was given in **Annex-11** to the report. This amount was inclusive of profiteered amount of Rs 10,36,481/- (including GST) which was the profiteered amount in respect of Applicant No. 1 mentioned at serial no.28 of **Annex-11**.

- 2.19 On the basis of the details of outward supplies of the construction service submitted by the Respondent, it was observed that the service had been supplied in the State of Maharashtra only.
- 2.20 From the above discussion, it appears that the benefit of additional ITC of 5.86% of the taxable turnover accrued to the Respondent and the same was required to be passed on to the Applicant and other recipients. It was also observed that the provision of Section 171 of the CGST Act, 2017 had been contravened by the Respondent inasmuch as the additional benefit of ITC @5.86% of the base price received by the Respondent during the period 01.07.2017 to 31.03.2019, needed to be passed on by the Respondent to the 17 buyers of flats including the Applicant comes to **Rs. 54,14,439/- (Rupees Fifty Four Lakh Fourteen Thousand Four Hundred and Thirty Nine only)** which included 12% GST had not been passed on to the Applicant and other recipients. On this account, **the Respondent had realized an additional amount to the tune of Rs. 10,36,481/- (including GST) from the Applicant** which included both the profiteered amount @5.86% of the taxable amount (base price) and GST on the said profiteered amount. These recipients was identifiable as per the documents on record as the Respondent provided their names and addresses along with unit no. allotted to them. As observed earlier, the Respondent had supplied construction services in the State of Maharashtra only.
- 2.21 The present investigation covers the period from 01.07.2017 to 31.03.2019. Profiteering, if any, for the period post March, 2019, had not been examined as the Respondent opted for a new scheme issued vide Notification 03/2019-Central Tax (Rate) dated 29.03.2019. In terms of this Notification the Respondent was required to pay Tax/GST @ 6% without taking/availing the benefit of Input Tax Credit. Thus, the Respondent was not eligible to avail the ITC w.e.f. 01.04.2019 and Section 171 of CGST Act, 2017 was not attracted.

2.22 In view of the aforementioned findings, it appears that Section 171(1) of the CGST Act, 2017, requiring that “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”, had been contravened in the present case.

3. The above Investigation Report was received by this Authority from the DGAP on 23.02.2021 and was considered in its sitting held on 04.03.2021 and Notice dated 10.03.2021 was issued to the Respondent and the Applicant No. 1 directing them to explain why the Report dated 23.02.2021 furnished by the DGAP should not be accepted and liability of the Respondent should not be fixed for violating the provisions of Section 171 of the CGST Act, 2017.

4. In response to the abovesaid Notice the Respondent had filed his submissions dated 22.03.2021, inter-alia, stating as under:-

4.1 He didn't have any incremental benefit of ITC, rather had diminishing benefit of ITC, based on qualitative factors which had converted his profitable project into loss making as explained below:

Particulars	Period in Months	Total Net Completion for the period	Percentage for the	Net Credit Claimed
Pre GST Regime (April 2016 to June 2017)	15		16.00	27,73,302
Post GST Regime (July 2017 to October 2019)	28		32.00	40,25,599
Proportionate Reasonable Credit based on stage of Completion in GST Regime compared to Pre GST Regime (27,73,302/16*32 (calculation for above))				55,46,604
Diminished Benefit in ITC				(6,21,005)

4.2 From above, it can be drawn that he had diminished benefit wherein law provides no insurance cover for Builders to recover it from buyer however

under agreement the same had been duly provided which can be appreciated from analysis of clauses of Agreement in next point.

- 4.3 The flat was sold to the complainant on 18.06.2018. The GST Department has, in fact, promoted the GST Law by stating that there would be removal of cascading effect in the tax structure which was present before introduction of GST, and therefore, the customers would be benefited due to which the adequate safeguard provisions were introduced to cover any benefit that accrues due to change in tax legislature to the assessee should be passed on the customers.
- 4.4 The complainant who bought the flat in June, 2018 which was much after the introduction of GST, and being completely aware, while finalising the price of the said flat that the adequate tax benefit, if any, had been already considered in the price that was offered to him and after considering the same he agreed to buy the flat. d
- 4.5 Nothing stopped him at the time of buying the flat or entering into the Agreement in June, 2018 to ask further reliefs, if any, which was being sought by the frivolous complaint filed with an intention to build a pressure on him.
- 4.6 The complainant was well aware that price of the flat was decided after considering the ITC benefit if any available to the builder and which he agreed while signing the Agreement and therefore, there was no question of any further additional benefit to be given which was already passed onto him in the agreed price.
- 4.7 The complainant while entering into agreement was aware that GST was already in force since 11 months and GST applicable at that time i.e. 12% (18% after 1/3rd rebate taken) was payable separately on agreed price. The tax benefit if any by way of ITC was already passed on by way of appropriate reduction in the price that was offered.

- 4.8 Clause 8 on Pg. 7 of Sale Agreement dated 18.06.2018 clearly specifies that the Sale Price was exclusive of GST and other Tax and all such amount shall be entirely borne and paid by the Purchasers.
- 4.9 The same was also confirmed in **Clause 12 on pg. 8** of the sale Agreement which again reiterates that the Sale price was exclusive of all tax including GST and all such tax applicable on the sale price shall be borne and paid by the Purchaser alone.
- 4.10 In **Clause 13 on Pg 8** of the Sale Agreement which reads as under:-

"The Purchaser was aware that as per present statute, GST was levied/applicable on the sale price payable"

"The Purchaser/s hereby undertakes to pay the amount of GST along with each instalments from the effective date and further shall not dispute or object to payments of such Statutory dues".

"The Promoter shall not be bound to accept the payments of any instalments unless the same was paid along with the amount of GST Applicable"

"Provided further that if on account of change/Amendments in the present statute or laws, statutes, rules, regulations and policies or enactment of new legislation of any new laws by the central and/or state government or any other taxes become payable hereafter on the amounts payable by the Purchasers to the promoter in respect of this transactions and/or aforesaid taxes levied was increased on account of revision by authorities. The Purchasers shall be solely and exclusively liable to bear and pay the same"

Thus, on cumulative reading of **Clause 8, 12 and 13** the complainant agreed to pay the GST at the applicable rate and also to borne any further tax increase due to change in law. The said clause of the Agreement clearly states that the price was exclusive of all tax and therefore, the construction cost incurred by

Respondent, while calculating the sale price at which sale was made was calculated after considering the Input Tax benefit if any.

- 4.11 Complainant was well aware that no ITC was available after 01.04.2019 and hence the construction cost had been escalated due to non-availability of ITC which was considered while fixing the Sale price, which in fact, should have been borne by the Purchaser as per the terms of the Agreement. The Respondent had not claimed the same but the complainant only with intention of extracting monies from the Respondent had filed the said complaint.
- 4.12 In view of the above, he requested that complainant had not come with clean hands and therefore, the said complaint should not be entertained at his initiation itself and hence intention of levying profiteering liability & penalty thereon should be dropped.

Without prejudice to his above claim they submitted that

- 4.13 DGAP's report was erroneous in nature wherein ITC Figure as mentioned at Sl. no. 4 of Table A mentioned in para 16 of Report and Total Saleable Area (in SQF) as mentioned at Sl. no 6 of Table A mentioned in para 16 of Report was wrongly arrived.
- 4.14 Below mentioned was the calculation as per the mechanism i.e. formula laid down in table A & B, with the correct figures duly highlighting them along with the detailed explanation why the revised figures should be accepted.

Table A

S.No.	Particulars	Total (Pre-GST)	Turnover	Explanation for Charges
		(April, 2016 to June, 2017)	(July 2017 to March 2019)	
1	CENVAT of Service Tax Paid on Input Services used for flats (A)	27,73,302	-	
2	Input Tax Credit of VAT Paid on Purchase of Inputs (B)	-	-	

3	Total CENVAT/Input Tax Credit Available (C) = (A+B)	27,73,302	-	
4	Input Tax Credit of GST Availed (D)	-	49,25,599	Mentioned in Detail below
5	Turnover for Flats as per Home Buyers List (E)	12,28,57,236	8,24,96,944	
6	Total Saleable Area (in SQF) (F)	26,288	26,288	Mentioned in Detail below
7	Total Sold Area (in SQF) relevant to turnover (G)	10,660	13,088	
8	Relevant ITC [(H) = (C)*(G)/(F)] & [(H) = (D)*(G)/(F)]	11,24,596.75	24,52,307	Consequently Changes
Ratio of ITC Post-GST [(I) = (H)/(E)]			2.97%	Consequently Changes

Table B

S.No.	Particulars	A	July, 2017 to March, 2019	Explanation for Charges
1	Period	A	July, 2017 to March, 2019	Explanation for Charges
2	Output GST rate (%)	B	12%	
3	Ratio of CENVAT credit/ ITC to Total Turnover as per table - 'B' above (%)	C	2.97%/ 0.92%	Consequently Changes
4	Increase in ITC availed post-GST (%)	D = 2.97% less 0.92%	2.05%	Consequently Changes
5	Analysis of Increase in input tax credit:			
6	Base Price raised during July, 2017 to March, 2019 (Rs.)	E	8,24,96,944	
7	GST raised over Base Price (Rs.)	F = E*B	98,99,633	
8	Total Demand raised	G = E+F	9,23,96,577	
9	Recalibrated Base Price	H = E*(1-D) or 94.14% of E	8,08,05,757	Consequently Changes
10	GST @12%	I = H*B	96,96,691	Consequently Changes
11	Commensurate demand price	J = H+I	9,05,02,447	Consequently Changes
12	Excess Collection of Demand or Profiteering Amount	K = G-J	18,94,130	Consequently Changes

4.15 The ITC figure mentioned in Table A as arrived by DGAP was Rs. 1,03,72,468 wherein ITC as per his calculation was otherwise, reconciliation along with due explanation was enshrined below-

Table C

ITC Reconciliation				
Sr No	Particulars	Denotion	Amount (Rs)	Explanation
1	Credit Taken from July 2017 to March 2018	A	42,25,477	
2	Credit Taken from April 2018 to March 2019	B	61,46,991	
3	Amount as per DGAP's Order	C=(A+B)	1,03,72,468	
4	Add: VAT/Excise Input taken in TRAN 1	D	34,47,573	Explained in detail below
5	Add: GST credit belonging to period 31st March 2019 taken in future returns after 31st March 2019	E	53,198	Explained in detail below
6	Less: GST Reversal as on 31st March 2019 on account of change in regime reversed in future 6 returns after 31st March 2019	F	-53,82,926	Explained in detail below
7	Less: GST Reversal on account of OC received for Unsold Inventories- for credit belonging before 31st March 2019	G	-35,64,714	Explained in detail below
8	Net GST Credit as mentioned by us in his reply dated 15.01.2021	H=(C+D+E+F+G)	49,25,599	
9	Less: Non Quantified Reversal of KKC, SC,	I		Explained in detail below

	SHEC which was not available in GST Regime			
10	Many other demerits that was not quantifiable	J		Explained in detail below
11	Final Net GST Credit Taken	K=(H+I+J)	49,25,599	

4.16 In relation to amount mentioned in Sl No 4 in above Table C, the DGAP had erroneously missed to take into account figures which we had claimed in TRAN-1 to the tune of RS. 34,47,573 for project "Sanghvi Solitaire which was duly mentioned by him in his submission dated 15 January 2021. The said amount would, however, increase the ITC amount and would be detrimental to him, in order to arrive at proper calculation, he had included the said amount in above reconciliation.

4.17 In relation to amount mentioned in Sl. No. 5 above in Table No C, the DGAP had erroneously missed to include GST credit of Rs. 53,198 in his calculation wherein the said credit belonged till 31st March 2019, however was missed by him to be claimed till 31st march 2019 return which was claimed by him in future returns. The said amount would, however, increase the ITC amount and would be detrimental to him, in order to arrive at proper calculation, he had included the said amount in above reconciliation.

4.18 In relation to Serial No 6 above in Table C, the DGAP had erred in not considering the said reversal of Rs.53,82,926 on account of change in regime where what had been reversed was the GST credit taken earlier till March 2019.

The said reversal belongs to the credit taken till 31st March 2019 where a calculation was suggested by CBIC to reverse so much of credit as on 31st March 2019, since his accounts finalization took time, he had reversed the said amount later on after 31st March 2019 Return.

Even though DGAP had restricted his Investigation till 31st March 2019, he should have appreciated that the word "benefit" was of great impart here, the

main question in this investigation was only whether he had received incremental benefit of ITC.

Where he had reversed the ITC it can under no means be said as benefit availed. Hence the said amount would go on to reduce the total ITC claimed.

- 4.19 In relation to Serial No 7 above in Table C, the DGAP again erred in not appreciating the word benefit wherein it was settled law that after OC proportionate credit had to be reversed.

Inter alia para 14 of DGAP's report states as follows:

Quote

"As Regards the reversal of ITC on account of Occupation Certificate it was informed that the reversal pertains to unsold units which do not form part of proceeding"

Unquote

From above it can be drawn that DGAP had been grossly mistaken in considering that whether the GST credit he was taking was claimed or not, if the said credit was liable to be reversed no benefit of that portion can be taken whatsoever.

Hence even after the said reversal happens after the investigation period, it was attached to what had been claimed earlier i.e. upto 31st March 2019 and the benefit was of only amount.

The credits taken was for whole project & any reversal on account of unsold inventories/ on account of change in regime would go on to reduce the earlier claimed amount. any bar to avoid such deduction would tarnish the mechanism mentioned in Table A & Table B wherein numerator & denominator would not match and any calculation derived from the same would be against the matching principle.

- 4.20 In relation to matters mentioned in Sl. No 9, in consonance with GST claimed by him in TRAN-1 where he was able to claim certain input due to introduction of GST he was also charged with some fall back wherein he was not able to

carry forward certain credits which were earlier allowed to be claimed like KKC, EC, SHEC. The said amount was duly carried forward in his last service tax returns but under GST Law the said credits were not allowed to us and hence the said loss should be allowed to reduce the ITC benefit received.

The above was also reiterated by him in his submission dated 15th January 2021 to which no effect was given by DGAP.

- 4.21 In relation to various other factors which had been completely ignored by the DGAP for which he re-iterated his submission dated 15 January 2021 before DGAP that various other factors due to which cost had shoot up due to introduction of GST such as Steel, Bricks, Paint & other Electrical goods used for finishing, and since in most of the goods GST rate was higher, he had to block his good amount of working capital which ultimately leads to increased borrowing cost.

Further from April, 2019 i.e. Reduced rate without ITC, there was various condition embossed on builder which leads to increase in construction cost i.e. 80% of all Inputs & 100% of Cement should be from GST registered dealer wherein all GST adds up to construction cost wherein builder was not left with from unregistered dealers.

At this stage he was unable to quantify how much negative impact he had faced after Introduction of GST wherein his project "Sanghvi Solitaire" had a huge loss of approx. Rs. 2 Crores wherein construction budgets were completely shaken by Introduction of GST, which could be appreciated from this that till 31 March 2018 he was offering profits in the said projects but after introduction of GST huge losses were booked in March 2019 & March 2020 thereby making his profitable project in loss making.

- 4.22 In relation to figures mentioned in SI No 6, DGAP had erred in not considering 3 Vacant Flats 1801, 1802 & 1902 having total area of 2316 Square Feet in total saleable area, hence now the correct figures stand at 26,288 Square Feet.

4.23 Summing up all the above factors, even though the amount arrived as per table was Rs. 18,94,130/- as profiteering amount. This kind of report where profiteering amount had been calculated even more than the net GST claimed would injure his business to the great extent. He concluded his submission with prayer that Anti-Profitteering provisions were introduced under GST law to prevent buyers from not getting the benefits passed on by the builders, but in his case complainant had abused the said provisions furnishing the main agenda i.e. whether the benefits had been gained by us due to introduction of GST which was not at all in his case.

5. Copy of the above submissions dated 22.03.2021 furnished by the Respondent, were then supplied to the Applicant No. 1 to file his submissions, if any, and to the DGAP to file his clarifications under Rule 133(2A) of the CGST Rules, 2017. In response, the Applicant No. 1 had filed his submissions dated 07.04.2021, wherein, he had submitted as under:-

5.1 Not a whisper was made about the ITC benefit at the time of finalizing the cost of purchase of the booked flat. He had agreed upon a price which was excluding of taxes and it was agreed upon that the taxes were payable as applicable. Also, further to the builder's claim, no calculation sheet was provided showing the benefit of ITC being passed on/ any adjustment credited to him, also no signatures were taken.

5.2 The builder had admitted that the flat sold to the Applicant No. 1 at cost price + applicable taxes, hence, in case of any increase or decrease in applicable taxes, the profit or loss belong to the Applicant No. 1.

6. In respect of the above submissions dated 07.04.2021 filed by the Applicant No. 1, the DGAP has submitted that the issues raised by the Applicant No. 1 had already been dealt by the DGAP in its investigation report dated 23.02.2021.

7. Further, the DGAP also filed its clarifications dated 11.06.2021, under Rule 133(2A) of the CGST Rules, 2017, in respect of the Respondent's submissions dated 22.03.2021. The DGAP in its report has inter-alia stated as under:-

7.1 DGAP's Report was erroneous in nature wherein ITC figure as mentioned at Sl. No. 4 of table A mentioned in para 16 of Report and Total Saleable

area (in SQF) as mentioned at Sl. No. 6 of Table A mentioned in para 16 of Report was wrongly arrived.

The above contention was wrong as figures of ITC had been taken from the figures reconciled with GST returns as submitted by the Respondent. The total saleable Area had been taken from RERA Registrations and sold area from Home Buyers' list as submitted by the Respondent.

7.2 The modified Table A and B submitted by the Respondent as per his own understanding.

The actual table-A and B of the DGAP's report dated 23.02.2021 was reproduced as under:

Table A

S.No.	Particulars	Total (Pre- GST)	Turnover
		(April, 2016 to June, 2017)	(July 2017 to March 2019)
1	CENVAT of Service Tax Paid on Input Services used for flats (A)	27,73,302	-
2	Input Tax Credit of VAT Paid on Purchase of Inputs (B)	-	-
3	Total CENVAT/Input Tax Credit Available (C)= (A+B)	27,73,302	-
4	Input Tax Credit of GST Availed (D)	-	1,03,72,468
5	Turnover for Flats as per Home Buyers List (E)	12,28,57,236	8,24,96,944
6	Total Saleable Area (in SQF) (F)	23,972	23,972
7	Total Sold Area (in SQF) relevant to turnover (G)	10,660	13,088
8	Relevant ITC [(H)= (C)*(G)/(F)] & [(H)= (D)*(G)/(F)]	12,33,247	56,63,059
	Ratio of ITC Post-GST[(I)=(H)(E)]	1.00%	6.86%

Table B

S.No.	Particulars	A	July, 2017 to March, 2019
1	Period		
2	Output GST rate (%)	B	12%
3	Ratio of CENVAT credit/ ITC to Total Turnover as per table - 'B' above (%)	C	6.86%/ 1.00%
4	Increase in ITC availed post-GST (%)	D= 6.86% less 1.00%	5.86%
5	Analysis of Increase in input tax credit:		
6	Base Price raised during July, 2017 to March, 2019 (Rs.)	E	8,24,96,944
7	GST raised over Base Price (Rs.)	F= E*B	98,99,633
8	Total Demand raised	G=E+F	9,23,96,577
9	Recalibrated Base Price	H= E*(1-D) or 94.14% of E	7,76,62,623
10	GST @12%	I= H* B	93,19,515
11	Commensurate demand price	J= H+I	8,69,82,138
12	Excess Collection of Demand or Profiteering Amount	K= G-J	54,14,439

7.3 The Respondent had submitted revised Table-C to arrive that net GST credit of Rs. 49,25,599/- in place of ITC of Rs. 1,03,72,468/ given in table A & B of the DGAP report.

The method adopted by the Respondent in Table- C for arriving at 'Final Net GST Credit Taken' was wrong as in DGAP Report relevant ITC was worked out by taking ITC of GST availed which had not been disputed by the Respondent. As per his own method, the Respondent had subtracted figures of ITC reversed after he opted for new scheme issued vide Notification 03/2019-Central Tax (Rate) dated 29.03.2019. The Respondent had further subtracted ITC of unsold flats from the ITC availed to arrive at net ITC, which was not correct. In this regard it was submitted that the reversal pertains to those flats which remain unsold and such units was never a part of profiteering calculation as profiteering was worked out for sold units only. The claim of the Respondent that TRAN-1 credit had not been taken into account was incorrect as the credit available to the Respondent from April 2016 to June 2017 had already been considered for computation of profiteering. TRAN-1 credit was nothing but

unutilized credit available to the Respondent upto June 2017. With regard to ITC of Rs. 53,198/-, which was not included in the DGAP Report, it was submitted that DGAP investigated the matter upto 31.03.2019 and ITC availed in the GST Returns upto 31.03.2019 had been taken for working out profiteering. The Respondent claimed that the above said ITC availed in future returns and should be included in the report of the DGAP was not sustainable as investigation period was taken upto 31.03.2019 only.

7.4 DGAP had erred in not considering 3 vacant flats having total area of 2316 Sqft in total saleable area.

The total saleable area had been taken from the Area declared by the Respondent in RERA Registration. Real Estate Regulatory Authority (RERA) was a statutory body to protect the interests of home buyers and it was mandatory for developer to furnish all information of the project e.g. saleable area, project plan, government approvals, land title status, schedule of completion etc.

8. 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 23.02.2022, and a copy of the above clarifications dated 05.07.2021 was supplied to the Respondent to file his re-joinder, if any, and personal hearing was held on 06.06.2022, wherein, the Respondent had re-iterated his previous submissions and filed his additional submissions dated 18.05.2022, subsequent to the hearing, wherein, he has re-iterated his previous submissions and inter alia stated as under:-

8.1 He had challenged the methodology adopted by the DGAP in form of comparing ratios of ITC to turnover which was not at all the methodology suggested in any law, the only thing which was relevant in determining the profiteering amount was the word 'benefit', the only requirement of the law was to determine whether builder had benefitted from change in tax regime and thereon whether the same had been passed on to the buyers or not.

8.2 Considering the proportionate methodology with reference to ITC and stage of completion there was loss of ITC of approx. 6 lakhs, which should have been technically recovered from purchasers as per the agreements, which he had refrained from.

8.3 Moreover, he also emphasised on the date of agreement where it can be appreciated that buyer had entered into the agreement much after the implementation of GST and he was quite matured with the price of flat vis a vis applicable tax.

8.4 DGAP in above extracted clarification had not accepted his ITC calculation by just stating that the amount which had been reversed pursuant to new regime on 01.04.2019 & reversal for unsold flats on receipt of OC had not been considered since investigation had been limited up to 31.03.2019.

In reference to above, Anti-profiteering was between pre & post GST regime wherein nowhere under law it was stated that in wake of change in regimes under GST itself the same should not be considered for calculation. Whereas reasonableness of the anti-profiteering law mandates to only determine the benefit from transition from pre-GST to post-GST.

8.5 DGAP should had appreciated that real estate project was not a product which was produced overnight using batch of raw material & overheads rather it was developed overtime and the entire time length of project vis a vis it's cost and thereon ITC should be considered in calculation of ascertaining benefit/profiteering amount.

8.6 Further, regarding not considering 3 unsold flats in calculation, DGAP had stated that he had considered records of RERA, wherein he should have appreciated the saleable area incorporating above flats in Annexure K to the Respondent's submission dated 22.03.2021.

8.7 Further, DGAP should have also appreciated that materials were used for developing those flats being integral part of building and GST credits was

considered for them in calculation and hence the saleable area of said flats cannot be overlooked in calculating profiteering amount which would make the formatted calculation invalid on account of matching concept for numerator and denominator.

8.8 Considering above facts & circumstances, even if he adopts the methodology of DGAP inserting the correct facts and figures the profiteering amount shall not exceed Rs.18,94,130/-.

9. We have carefully considered the Report furnished by the DGAP, the clarifications filed by him and the records of the case. Section 171 of the CGST Act, 2017 provides that any reduction in the rate of tax on any supply of goods or services or benefit of Input Tax Credit shall be passed on to the recipient by way of commensurate reduction in prices. In the instant case, there is no reduction of rate of tax during the relevant period and the only issue which is required to be decided by the Authority is as to whether Respondent is required to pass on the benefit of input tax credit. As mentioned in earlier paragraphs, DGAP has carried out investigation in the subject matter and collected relevant information/evidences from the Respondent and after the analysis of the same the DGAP has come to a conclusion that the Respondent has gained benefit of ITC on the supply of Construction services after the implementation of GST w.e.f. 01.07.2017 and the Respondent was required to pass on such benefit to the homebuyers by way of commensurate reduction in prices in terms of Section 171 of the CGST Act, 2017 during the period 01.07.2017 to 31.03.2019. The DGAP has concluded that, the benefit of additional Input Tax Credit of 5.86% of the turnover has accrued to the Respondent for the project "Sanghvi Solitaire". This benefit was required to be passed on to the recipients. Thus, Section 171 of the CGST, 2017 has been contravened by the Respondent. Inasmuch as the additional benefit of ITC @5.86% of the base price received by the Respondent during the period 01.07.2017 to 31.03.2019, has not been passed on by the Respondent to 17 recipients including the Applicant no. 1. These recipients are identifiable as per the documents provided by the Respondent. The DGAP has calculated that an amount of benefit of ITC not passed on to the recipients or in other words, the profiteered amount as Rs. 54,14,439/- which includes 12% GST on the base profiteered amount of Rs. 48,34,321/-. The period of investigation covers the

period from 01.07.2017 to 30.10.2020, however, the Respondent had opted for the new regime (i.e. payment of tax @5% without ITC) from 01.04.2019, where he was not able to claim ITC, hence, profiteering has been calculated till 31.03.2019. He had received Occupancy Certificate (OC) in October, 2019, and therefore, investigation with respect to unsold units did not form the part of profiteering as calculated by the DGAP.

10. The Respondent has contended that:

10.1 The DGAP has not considered Rs. 34,47,573/- being the TRAN-1 credit reflected in their TRAN-1 Return and Rs. 53,198/- additional GST input tax credit availed by them as credits due to them in the period from 1.07.2017 onwards.

10.2 The Respondent has also contended that, the DGAP has not considered that, he has reversed Rs. 53,82,926/- of input tax credit as per formula suggested by CBIC on opting for the scheme under Notf No. 3/2019 (CT)(Rate) w.e.f. 1.04.2019 and has also reversed Rs. 35,64,714/- of input tax credit on account of Units remaining unsold on date of issue of Occupation Certificate in October, 2019.

10.3 It is the Respondent's submission that, if such reversals of Rs.53,82,926 + Rs.35,64,714 = Rs. 89,47,640/- is taken into consideration from the total ITC availed from 1.07.2017 onwards for the project "Sanghvi Solitaire", then, there cannot be any calculation of profiteered amount of Rs.48,54,321/- + 12% GST thereon = Rs.54,14,439/-, as the profiteered amount calculated by the DGAP would be more than the benefit of ITC available to them.

11. The Authority finds that, the methodology adopted by the DGAP in Tables A & B of its Report are based on a comparison of the ratio of ITC over turnover of the Respondent between April, 2016 to June, 2017 and from July, 2017 to March, 2019. This refers to the actual credits taken in these two periods and do not pertain to any ITC lying in the credit of the accounts of the Respondent as on 31.03.2016 or 30.06.2017. The methodology as adopted by the DGAP and accepted by this Authority aims to determine the benefit of ITC as a percentage of turnover i.e.

amounts received from recipients of supply during the two periods under consideration.

Hence, the TRAN-1 credit, if any, available to the Respondent is not apportionable as ITC received with respect to turnover for the period from 1.07.2017 onwards. Such credit, if any, would stand reflected in the accounts of the Respondent as credits earned in the pre GST regime (and also prior to 1.04.2016) and lying unutilised and carried forth in the GST regime after 1.07.2017.

Likewise, the reversals of ITC, if any, made by the Respondent on account of opting for the Scheme under Notf No. 3/2019 (CT)(Rate) w.e.f. 1.04.2019 and/or on account of Units remaining unsold on date of issue of Occupation Certificate in October, 2019, are not from ITC taken during the period 1.07.2017 to 31.3.2019 alone, but, from the common pool of ITC lying in their books of accounts and attributable to both periods i.e. period prior to 1.07.2017 (pre GST carried forward) as well as from 1.07.2017.

Hence, the reversals of Rs.53,82,926 + Rs.35,64,714=Rs. 89,47,640/- claimed to have been made by the Respondent, if actually made, do not pertain to reversals of ITC earned from 1.07.2017 onwards only, but, also include ITC earned prior to 1.07.2017 also.

Hence, the Authority finds that, the calculations made by the Respondent and stated at Table C above, do not in anyway affect the robustness of the Methodology adopted by the DGAP in calculating the profiteered amount.

It is a fact that, during the period from 1.07.2017 to 31.03.2019, the Respondent got ITC of Rs. 1,03,72,468/- and this amount was 6.86% of the turnover of the Respondent from his customers during such period whereas during the period from 1.04.2016 to 30.06.2017 such percentage of ITC to turnover was only 1%. Hence, the differential benefit of percentage of ITC is an additional 5.86%.

Hence, the profiteered amount calculated at Rs.48,54,321/- i.e. @ 5.86% of such Turnover, by the DGAP is not more than the benefit of ITC of Rs. 1,03,72,468/- available on account of credits actually taken by the Respondent from 1.07.2017 to 31.03.2019. In addition the Respondent has charged and collected 12% GST i.e. Rs. 5,60,118/- on such amount, hence, the total amount to be passed on to the recipients in terms of Section 171 of the CGST Act, 2017 is Rs. Rs.48,54,321/- +Rs. 5,60,118/- =Rs. 54,14,439/-.

Hence, such contention of the Respondent is not sustainable.

12. The Respondent has contended that the Applicant No. 1 bought the house in June, 2018, much after the introduction of GST and being completely aware while finalising the price of the said flat that the adequate tax benefit has been already considered in the price that was offered to him and he agreed to buy the flat. The Respondent has also contended that with effect from 01.04.2019, no benefit of ITC was available that was considered while fixing the Sale price, which, should have been borne by the Applicant No. 1 as per the terms of the Agreement for Sale. Further, the Respondent has claimed that as per the Agreement for Sale, the sale price was exclusive of all the taxes including GST and all such taxes applicable were to be borne by the Applicant No. 1 alone. The Respondent further claimed that the cost of construction was also escalated due to non-availability of ITC which was considered while fixing the Sale Price. In this connection, the Authority finds that the Respondent was eligible to avail credit of all taxes paid on inputs in the post-GST period, which was not available in pre-GST period. These taxes were a cost to him and tax liability burden which became available as credit in post-GST period. The Respondent has to pass on the additional benefit of ITC which has accrued to him in the post-GST period as compared to the pre-GST period which is the revenue sacrificed by the Central and State/UT Governments in the interest of consumers irrespective of cost dynamics, in accordance with Section 171. Therefore, the only factor which has been considered is additional availability of ITC in the post-GST period which was not available in the earlier regime. Further, the DGAP in its investigation report dated 25.02.2021 has clearly mentioned that, although, the period of investigation in the present case is from 01.07.2017 to 30.10.2020, the profiteering has been calculated till 31.03.2019, i.e. till the date the Respondent was eligible to avail ITC on the GST paid by him. Hence, the Respondent's contention is not acceptable.

13. The Respondent has also contended that various factors, that affect the cost of project, were completely ignored by the DGAP while calculating the amount of profiteering. This contention of the Respondent is not correct, as Section 171 of the CGST Act, 2017, only requires passing on the benefit of ITC which the Respondent has additionally availed in the post GST period, exact amount of which is available from the GSTR-3B Returns filed by him, on the basis of which benefit to be passed on to the buyers has been computed. It has no connection with rise in the prices of the goods and services purchased by the Respondent as Section 171 is only concerned

with the additional ITC availed by him. The data used by the Respondent in the Tables prepared by him has no connection with the figures of ITC shown by the Respondent in his Returns on the basis of which benefit has been computed. As per his own method, the Respondent has subtracted ITC reversed after he opted for the new scheme and the ITC of unsold flats from the ITC availed to arrive at the net ITC. This method of the Respondent is not correct, as the reversal pertained to those flats which remains unsold and such units were never part of the profiteering calculation and as also stated above such reversals were made from a common pool of ITC attributable to the periods/ earned during the periods pre 1.07.2017 (carried forward) and post 1.07.2017.

14. The Respondent also contended that the DGAP has not considered 3 vacant flats having total area of 2316 sq. ft. in total Saleable area. However, the DGAP has clarified this contention and submitted that the total saleable area has been taken from the RERA Registration. The RERA is a statutory body to protect the interest of homebuyers and it is mandatory for the builders/developers to furnish all information regarding the project to them. We find merit in the record relied upon by the DGAP for its calculation and the Respondent's contention is without any basis.

15. In view of the above facts, the Authority finds that the benefit of additional Input Tax Credit of 5.86% of the turnover has accrued to the Respondent for the project "Sanghvi Solitaire". This benefit was required to be passed on to the recipients. Thus, Section 171 of the CGST, 2017 has been contravened by the Respondent, inasmuch as the additional benefit of ITC @5.86% of the base price received by the Respondent during the period 01.07.2017 to 31.03.2019, was required to be passed on by the Respondent to 17 recipients including the Applicant no. 1. These recipients are identifiable as per the documents provided by the Respondent, giving the names and addresses along with Unit no. allotted to such recipients. From the above discussions, the Authority determines that the Respondent has profited an amount of Rs. 54,14,439/- (including Rs. 10,36,481/- of Applicant No. 1).

16. Therefore, given the above facts, the 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. The details of the recipients and benefit which is required to be passed on to each recipient/homebuyer (including Applicant No. 1) along with the details of the unit are contained in the Annexure 'A' to this Order. The Authority directs that the profiteered amount as determined shall be passed on/returned by the Respondent to the recipients of supply along with interest @18%, as prescribed under Rule 133(3)(b) of the CGST Rules, 2017, from the date such amount was profiteered by the Respondent up till the date such amount is passed on/returned to the respective recipient of supply (if not already passed on) within a period of three months from the date of this Order failing which it shall be recovered as per the provisions of the CGST Act, 2017.

17. For the reasons mentioned hereinabove and in the given facts and circumstances and also stated position of law we find that the Respondent has denied the benefit of ITC to the buyers of his flats/customers/recipients in contravention of the provisions of Section 171 (1) of the CGST Act, 2017. The Authority holds that the Respondent has committed an offence by violating the provisions of Section 171 (1) during the period from 01.07.2017 to 31.03.2019, and therefore, he is liable for imposition of penalty under the provisions of Section 171 (3A) of the above Act. However, perusal of the provisions of the said Section 171 (3A) shows that it has been inserted in the CGST Act, 2017 w.e.f. 01.01.2020 vide Section 112 of the Finance Act, 2019 and it was not in operation during the period from 01.07.2017 to 31.03.2019 when the Respondent had committed the above violation. Hence, the said penalty under Section 171 (3A) cannot be imposed on the Respondent retrospectively.

18. The concerned jurisdictional CGST/SGST Commissioner is also directed to ensure compliance of this Order. It may be ensured that the benefit of ITC as determined by the Authority as per the Annexure 'A' of this Order be passed on along with interest @18% to each homebuyer/customer, if not already passed on. In this regard an advertisement may also be published in a minimum of two local Newspapers/vernacular press in Hindi/English/local language with the details i.e. Name of the builder (Respondent) - M/s Sanghvi Premises Pvt Ltd., Project- "Sanghvi Solitaire", Location- Borivali, Mumbai, Maharashtra and amount of profiteering Rs. 54,14,439/- so that the Applicant No. 1 along with Non-Applicant homebuyers/customers/recipients can claim the benefit of ITC which has not been

passed on to them. Homebuyers/customers/recipients may also be informed that the detailed NAA Order is available on Authority's website www.naa.gov.in. Contact details of concerned Jurisdictional Commissioner CGST/SGST for compliance of this Authority's order may also be advertised through the said advertisement.

19. Since there are other Projects/Blocks being constructed by the Respondent under the single GST Registration No. i.e. 27AAACI0598D1ZM, the Authority has reason to believe that the Respondent may have resorted to the profiteering in the said projects also and hence, directs the DGAP under Rule 133(5) to investigate all the others projects of the Respondent under the same GST registration which have not yet been investigated in accordance with the provisions of Section 171 of the CGST Act, 2017 and submit the complete investigation report for all the Projects under this single GST Registration. N

20. Further, this Authority as per Rule 136 of the CGST Rules 2017 directs the concerned jurisdictional CGST/SGST Commissioner shall also submit a Report regarding the compliance of this order to the Authority and the DGAP within a period of 4 months from the date of this Order.

21. Further, the Hon'ble Supreme Court, vide its Order dated 23.03.2020 in Suo Moto Writ Petition (C) No. 03/2020 while taking suo-moto cognizance of the situation arising on account of the Covid-19 pandemic, has extended the period of limitation prescribed under the 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.

22. A copy each of this Order be supplied free of cost to the Applicants, the Respondent, Commissioners CGST/SGST Maharashtra, the Principal Secretary (Town and Country Planning), Government of Maharashtra as well as MaharashtraRERA for necessary action. File be consigned after completion.

Encls: Annexure A List of buyers with details of determined profiteered amount (1 page)

Sd/-
(Amand Shah)
Technical Member &
Chairman



(Hitesh Shah)
Technical Member

Sd/-
(Pranod Kumar
Singh)
Technical Member

Certified Copy

(Dinesh Meena)
NAA, Secretary

F. No. 22011/NAA/46/Sanghvi Premises/2021/7742-7748 Dated: 26.07.2022
Copy To:-

1. M/s Sanghvi Premises Pvt Ltd., 401, Rangoli Time Complex, Adjoining Premier Theatre, Dr. B.A. Road, Parel (East), Mumbai- 400012.
2. Sh. Dinesh Jain & Ms. Madhu Jain, B-1601, Sanghvi solitaire, M.G. Road, Corner of the 9th Carter Road, Borivali East, Mumbai- 400067.
3. Commissioner, CGST & CX, Audit-II Commissionerate, 30th floor, Centre-I, World Trade Centre, Cuffe Parade, Mumbai - 400 005.
4. Additional Commissioner, The Additional Commissioner, State Tax, Maharashtra, 4th Floor, GST Bhawan, Yerwada, Airport Road, Pune - 411 006.
5. Principal Secretary (RERA), 6th & 7th Floor, Housefin Bhavan, Plot No. C - 21, E-Block, Bandra Kurla Complex, Bandra (E), Mumbai 400051.

Order No.48/2022

Dinesh Jain & Ors. Vs M/s Sanghvi Premises Pvt. Ltd.

6. Directorate General of Anti-Profitteering, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, New Delhi-110001.
7. Guard File.

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ANNEXURE - A

M/s Sanghvi Premises Pvt. Ltd. (Project - Sanghvi Solitaire)			
Profiteering details of the Home Buyers			
Sr. No.	Name of Customer	Unit no.	Final Profiteering
1	Priyanka Vasant Samant	B-402	831879
2	Maniben Resansinh Rathod	B-501	61395
3	Aadhitya Atmaram Walswalkar	B-502	731626
4	Vivek Subhash Mavanikar	B-602	52999
5	Lata T. Salun	B-702	30945
6	Pitabas Nayak	B-801	54573
7	Jayarama Aithappa Shetty	B-802	41164
8	Ramesh Devchand Parmar	B-901	1257995
9	Ramesh Devchand Parmar	B-902	925969
10	Bhimsen Singh	B-1102	52485
11	Sugandh Roshanlal Ostwal	B-1301	71670
12	Mr. Dhondu Gangaram mahadik	B-1302	43514
13	Mr. vilas Shivram Sanap	B-1402	48001
14	Ajgy Chandrakant Madane	B-1501	69603
15	Aruna ravindra Adagatha	B-1502	51455
16	Dinesh Babulal Jain	B-1601	1036481
17	Mrs. Chandra Shekhar Kanan	B-1602	52485
		Total	54,14,439

