

**BEFORE THE NATIONAL ANTI-PROFITTEERING AUTHORITY**

**UNDER THE CENTRAL GOODS & SERVICES TAX ACT, 2017**

Order No. 61/2022  
Date of Institution 26.02.2021  
Date of Order 26.08.2022

**In the matter of:**

1. **Sh. Mahendra Kishanlal Prajapati**, Block E-302, Vishwanath Sarathya, Opp. Club 07, Sky City Road, Shela, Ahmedabad, 380058.
2. **Sh. Sabil Patel**, C-701, Vishwanath sarathya, 10 ND Avenue, Opp. Club 07, off SP Ring road, Shela Ahmedabad-380058.
3. **Smt. Meghana Vishal Malkan**, B-601, Vishwanath Sarathya, Opp. Club 07 Off SP Ring Road Shela Ahemdabad-380058.
4. **Sh. Khushal Dabhi**, B904, Vishwanath Sarathya, opp club 07 Lane, Near Mather Homes, Sky City Shela Road, Shela Ahmedabad-380058.
5. **Sh. Trunal P. Kansara**, C-302, Vishwanath Sarathya, 10ND avenue, opp. club 07, Off S.P Ring road, Shela, Ahmedabad-380058.
6. **Sh. Kanhai Patel**, C-1204, Vishwanath Sarathya, 10, ND Avenue, Opp. Club 07, Shela, Ahmedabad, 380058 Gujarat
7. **Sh. Chetan Parmar**, E-202, Vishwanath Sarathya, opp. club 07, 10 ND Avenue, off S P Ring road, Shela, Ahmedabad-380058.
8. **Sh. Dhaval Tridevi**, D-802, Vishwanath Sarathya, 10, N.D. Avenue, Opp. club 07, Shela road, shela, Ahmedabad 380058.
9. **Sh. Nakul Murani**, B-302, Vishwanath Sarathya, 10 ND Avenue, Opp. club 07, sky city road, off SP Ring Road, Shela, Ahmedabad 380058.
10. **Sh. Jitu Mistry**, C-1104 Vishwanath Sarathya, 10 ND Avenue Opp. club 07 shela. Ahmedabad 380058.
11. **M. R. Joshi**, B-404, Vishwanath Sarathya, 10 ND Avenue, Opp. 07 Club, Sky City Road, Off. SP Ring road, Shela, Ahmedabad-380058.
12. **Sh. Jamanbhai C Mungara**, C-1103 Vishwanath Sarathya, 10 ND Avenue opp. Club 07 shela. Ahmedabad 380058.

13. **Director General of Anti-Profitteering**, 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 Vishwanath Builders**, 17, N. D. Avenue, Opp- Club 07, Sky City Road, Off S P Ring Road, Shela, Ahmedabad – 380058.

Respondent

**Quorum:-**

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

**Present :-**

1. Sh. Mahendra Prajapati, Applicant No. 1, Sh. Sahil Patel, Applicant No. 2, Sh. Trunal Kansara, Applicant No. 5, Sh. Kanhai Patel, Applicant No. 6, Sh. Dhaval, Applicant No. 8, Sh. Namish Jambhai C Mungara, Applicant No. 12, & Sh. Raminder Singh, Assistant Commissioner for the DGAP.
2. Sh. Yuvraj Thakore, Advocate and authorised representative for the Respondent.

**ORDER**

1. The present report dated 26.02.2021 has been received from the Director General of Anti-Profitteering (DGAP), i.e. Applicant No. 13, after a detailed investigation under Rule 129(6) of the CGST Rules, 2017. The brief facts of the case are that a reference was received by the DGAP from the Standing Committee on Anti-profitteering to conduct a detailed investigation in respect of an application filed under Rule 128 of the CGST Rules, 2017, alleging profiteering in respect of construction service supplied by Respondent for the project "VISHWANATH SARATHYA". The Applicants had submitted that they had booked units in the Respondent's project "VISHWANATH

SARATHYA”, Ahmedabad and alleged that the Respondent did not pass on the benefit of ITC to him by way of commensurate reduction in price after implementation of GST w.e.f. 01.07.2017, in terms of Section 171 of the CGST Act, 2017. Accordingly, it had been decided to initiate an investigation and collect evidence necessary to determine whether the commensurate benefit of ITC had been passed on by the Respondent to the Applicants in respect of the construction service supplied by the Respondent. Details of Applicants are as under:

**Table-A**

Sl. No.	Name of Applicants	Address	E-mail id	Unit No.
1.	Mahendra Kishanlal Prajapati	BLOCK E-302, VISHAWANT SARATHYA, OPP. CLUB 07, SKY CITY ROAD, SHELA, AHMEDABAD,380058	<a href="mailto:mahendraprajapati83@gmail.com">mahendraprajapati83@gmail.com</a>	E-302
2.	Sahil Patel	C-701, Vishwanath sarathya, 10 ND Avenue, Opp-Club 07, off SP Ring road, Shela Ahmedabad-380058	<a href="mailto:patelsahil.1989@gmail.com">patelsahil.1989@gmail.com</a>	C-701
3.	Meghana Vishal Malkan	B-601, Vishwanath Sarathya,opp Club 07 Off SP Ring Road Shela Ahmedabad-380058	<a href="mailto:malkan2001@gmail.com">malkan2001@gmail.com</a>	B-601
4.	Khushal Dabhi	B904, Vishwanath Sarathya, opp club 07 Lane, Near Mather Homes, Sky City Shela Road, Shela Ahmedabad-380058	<a href="mailto:khushal.dhabhi@gmail.com">khushal.dhabhi@gmail.com</a>	B-904
5.	Trunal P. Kansara	C-302, Vishwanath sarthya, 10ND avenue, opp club 07, Off S.P Ring road , Shela, Ahmedabad-380058	<a href="mailto:trunalkansara@gmail.com">trunalkansara@gmail.com</a>	C-301
6.	Kanhai Patel	C-1204, Vishwanath sarthya, 10, ND Avenue,Opp, club 07,Shela, Ahmedabad, 380058 Gujarat	<a href="mailto:kanhaipatel@gudapps.com">kanhaipatel@gudapps.com</a>	C-1204
7.	Chetan Parmar	E-202, Vishwanath Sarthya, op. club 07,10 ND Avenue, off S P Ring road, Shela, Ahmedabad-380058	<a href="mailto:Chetan12887@gmail.com">Chetan12887@gmail.com</a>	E-202
8.	Dhaval Tridevi	D-802, Vishwanath sarathya, 10, N.D. Avenue, opp club 07, Shela road, shela, Ahmedabad 380058	<a href="mailto:dhart17a@gmail.com">dhart17a@gmail.com</a>	D-802
9.	Nakul Murani	B-302, Vishwanath sarathya, 10 ND Avenue, Opp club 07, sky city road,	<a href="mailto:nakulmurani@gmail.com">nakulmurani@gmail.com</a>	NA

		off SP Ring Road, Shela, Ahmedabad 380058		
10.	Jitu Mistry	C-1104 Vishwanath sarathya, 10 ND Avenue opp, club 07 shela. Ahmedabad 380058	<a href="mailto:jitumistry8@gmail.com">jitumistry8@gmail.com</a>	C-1003
11.	M.R Joshi	B-404, Vishwanath Sarathya, m10 ND Avenue, Opp. 07 Club, Sky City Road, Off. SP Ring road, shela, Ahmedabad-380058	<a href="mailto:Mmrjoshi12853@gmail.com">Mmrjoshi12853@gmail.com</a>	NA
12.	Jamanbhai C Mungara	C-1103 Vishwanath Sarathya, 10 ND Avenue opp. Club 07 shela. Ahmedabad 380058	<a href="mailto:Mail4naimish@gmail.com">Mail4naimish@gmail.com</a>	C-1103

2. The DGAP in his report dated 26.02.2021 has, inter alia, stated that:-

2.1 The aforesaid applications were examined by the Standing Committee on Anti-profiteering in his meeting, the minutes of which were received in the DGAP on 17.07.2020, whereby it was decided to forward the same to the DGAP to conduct a detailed investigation in the matter. Along with the minutes of the meeting, the Standing Committee forwarded the following documents:

- i. Copy of complaints.
- ii. Copy of Receipt Vouchers issued in the name of the Applicants.

2.2 On receipt of the reference from the Standing Committee on Anti-profiteering, a Notice under Rule 129 of the Rules was issued by the Director General of Anti-Profiteering on 07.08.2020, calling upon the Respondent to reply as to whether he admitted that the benefit of ITC had not been passed on to the Applicants 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 supporting documents.

2.3 Vide the said Notice dated 07.08.2020, the Respondent was given an opportunity to inspect the non-confidential evidences/information submitted by the Applicants during the

period 25.08.2020 to 26.08.2020, which the Respondent availed on 29.01.2021.

- 2.4 Vide e-mail dated 25.02.2021, the Applicants were also afforded an opportunity to inspect the non-confidential documents/reply furnished by the Respondent. However, the Applicants did not avail the opportunity.
- 2.5 The time limit to complete the investigation was 16.01.2021 in terms of Rule 129(6) of the CGST Rules, 2017. However, in terms of Notification No. 35/2020 –Central Tax dated 03.04.2020, Notification No. 55/2020 –Central Tax dated 27.06.2020, Notification No. 65/2020 –Central Tax dated 01.09.2020, and further amended vide Notification No. 91/2020 – Central Tax dated 14.12.2020, issued by the Central Board of Indirect Taxes and Customs under Section 168 (A) of the CGST Act, 2017, where, any time limit for completion or compliance of any action, which falls during the period from the 20th day of March, 2020 to the 30th day of March, 2021, and where completion or compliance of such action had not been made within such time, then the time limit for completion or compliance of such action, shall be extended upto the 31st day of March, 2021, including for the purpose of furnishing any report under the provision of the Central Goods and Service Tax Act, 2017. Thus, in term of serial no. (i)(b) of Notification No. 35/2020 -Central Tax dated 03.04.2020 as amended vide Notification No. 91/2020 dated 14.12.2020, the time limit for submission of the report stands extended up to 31.03.2021.
- 2.7 The period covered by the current investigation was from 01.07.2017 to 30.06.2020.
- 2.8 In response to the Notice dated 07.08.2020 and subsequent reminders dated 03.09.2020, 24.12.2020, 06.01.2021, 17.02.2021, 24.02.2021 and Summons dated 22.01.2021, the Respondent submitted the following documents/information/reply vide his letters/e-mails dated

08.09.2020, 16.09.2020, 12.01.2021, 13.01.2021, 29.01.2021, 23.02.2021 and 25.02.2021:

- i. Copies of GSTR-1 returns for the period July, 2017 to June, 2020.
- ii. Copies of GSTR-3B returns for the period July, 2017 to June, 2020.
- iii. Copies of TRAN-1.
- iv. Electronic Credit Ledger for the period July, 2017 to March, 2020.
- v. Details of VAT & ST-3 returns for the period April, 2016 to June, 2017.
- vi. Copies of all demand letters, sale agreement/contract issued in the name of the Applicants.
- vii. Details of applicable tax rates, pre-GST and post-GST.
- viii. Balance Sheet (including all annexures and profit/loss account) for the FY 2016-17, 2017-18, 2018-19, 2019-20 & Trial Balance for the period April to June 2020.
- ix. Details of VAT, Service Tax, ITC of VAT, CENVAT Credit for the period April, 2016 to June, 2017, Output GST and ITC for the period July, 2017 to June, 2020 for the project "SARATHYA".
- x. List of home-buyers for the project "SARATHYA".
- xi. Project details submitted to RERA.
- xii. Copy of Agreement/Registry between the Land Owners and the Developer for the project "SARATHYA".

2.9 Further, the Respondent, in his submissions before the DGAP, stated that:

- i. The present proceedings initiated were without the authority of law and were contrary to the provisions of law. The provisions of Anti-Profiteering were not applicable as the Respondent had reversed the excess ITC and no benefit of any excess ITC had been claimed by the Respondent.
  - ii. The Building Use permission of the project "SARATHYA" was obtained in November, 2018 and therefore, after November 2018 all the sale of the units of the said project would be termed as sale of immovable properties and no provisions of GST would be applicable. The Respondent submitted a copy of Building Use (BU) permission dated 19.11.2018 received from Ahmedabad Urban Development Authority.
- 2.10 Vide the Notice dated 07.08.2020, 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. The Respondent vide email dated 25.02.2021 claimed confidentiality of the list of homebuyers, provided to the DGAP.
- 2.11 The subject application, the various replies of the Respondent and the documents/evidences on record had been examined by the DGAP. The main issues for determination were whether there was any reduction in the rate of tax or benefit of ITC on the supply of construction service by the Respondent after implementation of GST w.e.f. 01.07.2017 and if so, whether such benefit was passed on by the Respondent to the recipients, in terms of Section 171 of the CGST Act, 2017.
- 2.12 The DGAP referred to Para 5 of Schedule-III of the CGST Act, 2017 (Activities or Transactions which shall be treated neither as a supply of goods nor a supply of services) which reads as "*Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building*" along with clause (b) of Paragraph 5 of Schedule II of the CGST Act, 2017 which 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, it was apparent that 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 subsection (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, ITC pertaining to the unsold units was outside the scope of this investigation and the Respondent was required to recalibrate the selling price of such units to be sold to the prospective buyers by considering the proportionate additional ITC available to him post-GST.*

- 2.13 The present case pertains to supply of construction service and the investigation was limited to one project i.e. “SARATHYA” only, in which the Applicants had booked his respective units.



2.14 As regards the allegation of profiteering and documents submitted by the Respondent, it was observed that prior to 01.07.2017, i.e., before the GST was introduced, it appeared that the Respondent were eligible to avail CENVAT credit of Service Tax paid on input services. However, CENVAT credit of Central Excise duty paid on the inputs was not admissible as per the CENVAT Credit Rules, 2004, which was in force at the material time. After going through the VAT Returns submitted by the Respondent, it was revealed that no ITC of VAT was availed by the Respondent. Further, post-GST, the Respondent could avail the ITC of GST paid on all the inputs and input services including the sub-contracts. From the information submitted by the Respondent for the period April, 2016 to June, 2020, the details of the ITC availed by him, his total turnover from the project "SARATHYA" and the ratio of ITC to the turnover during the pre-GST (April, 2016 to June, 2017) and post-GST (July, 2017 to June, 2020) periods, was furnished in table-'B' below.

**Table-B**

*(Amount in Rs.)*

S.No.	Particulars	Total (Pre-GST) April, 2016 to June, 2017	Total (Post-GST) July, 2017 to June, 2020
1	CENVAT of Service Tax Paid on Input Services (A)	56,11,765	-
2	Input Tax Credit of VAT paid on Inputs (B)	-	-
3	Total CENVAT/VAT/Input Tax Credit Available (C=A+B)	56,11,765	-
4	Input Tax Credit of GST Available (D)	-	7,16,86,022
5	Total Turnover for Flats as per Home Buyers List (E)	6,74,57,221	83,34,68,714
6	Less the Basic demand booked after 19.11.2018 (post BU permission) (F)	4,05,72,098	12,88,53,230
7	<b>Total Net Basic Demand during July, 2017 to June, 2020 (G)=E-F</b>	2,68,85,123	70,46,15,484
8	Total Saleable Area (H)	18,337	18,337
9	Sold Area relevant to Turnover in Sq Ft. (I)	5,018	17,560
10	Less sold area after 19.11.2018 (post BU permission) (J)	914	2,393
11	Net sold area (K)=I-J	4,104	15,167
12	ITC proportionate to Sold Area (L)= (C or D)* K/H)	12,55,873	5,92,95,173
13	<b>Ratio of Cenvat/Input Tax Credit to Turnover (M=L/G*100)</b>	<b>4.67%</b>	<b>8.42%</b>

2.15 From the above Table-'B', 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 4.67% and during the post-GST period (July, 2017 to June, 2020), it was 8.42%. This clearly confirmed that post-GST, the Respondent had benefited from additional ITC to the tune of 3.75% [8.42% (-) 4.67%] of the turnover.

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 on value) on construction service, vide Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017. Accordingly, the profiteering had been examined by comparing the applicable tax rate and ITC available for the pre-GST period (April, 2016 to June, 2017) when Service Tax was 4.5% with the post-GST period (July, 2017 to June, 2020) when the GST rate was 12% on construction service. On the basis of the figures contained in Table-'B' above, the comparative figures of the ratio of ITC availed/available to the turnover in the pre and post GST periods, recalibrated base price and the excess collection (profiteering) during the post-GST period, was tabulated in table-'C' below.

*Table-C*

(Amount in Rs)

S. No.	Particulars		
1	Period	A	July, 2017 to June, 2020
2	Output tax rate (%)	B	12.00%
3	Ratio of CENVAT/VAT/GST ITC to Total Turnover as per Table - B above (%)	C	8.42%/4.67%
4	Increase in ITC availed post-GST (%)	D	3.75%
5	<b>Analysis of Increase in input tax credit:</b>		
6	Total Basic Demand during July, 2017 to June, 2020 (excluding post BU permission)	E	70,46,15,484
7	GST @12%	F= E*12%	8,45,53,858
8	Total demand	G= E+F	78,91,69,342
9	Recalibrated Basic Price	H=E*(1-D) or 96.25% of E	67,81,92,403
10	GST @12%	I=H*12%	8,13,83,088
11	Commensurate demand price	J=H+I	75,95,75,492
12	<b>Excess Collection of Demand or Profiteered Amount</b>	<b>K=G - J</b>	<b>2,95,93,850</b>

- 2.17 From table-‘C’ above, it was observed that additional ITC of 3.75% of the turnover should had resulted in commensurate reduction in the basic price as well as cum-tax price. In terms of Section 171 of the CGST Act, 2017, the benefit of the additional ITC was required to be passed on to the recipients. In other words, by not reducing the pre-GST basic price by 3.75% on account of additional benefit of ITC and charging GST @ 12% on the pre-GST basic price, the Respondent appear to had contravened the provisions of Section 171 of the of the CGST Act, 2017.
- 2.18 Having established the fact of profiteering, the next step was to quantify the same. On the basis of the aforesaid CENVAT/Input Tax Credit availability in the pre and post-GST periods and the demands raised by the Respondent on the home buyers during the period 01.07.2017 to 30.06.2020, the amount of benefit of ITC not passed on to the recipients or in other words, the profiteered amount comes to Rs. 2,95,93,850/-, including GST. The home buyer and unit no. wise break-up of this amount was given. It also included the benefit of ITC to be passed on to each of the Applicants. 18
- 2.19 Before concluding the investigation, it was pertinent to mention that as per homebuyers’ list, out of total 260 units in the project, 02 units was unsold. In the pre-GST period, demands were raised from 71 buyers who had booked the units, and the net total of demands raised from such units only had been taken into consideration. Similarly, in the post-GST period 01.07.2017 to 30.06.2020, demands were raised from 249 buyers who had booked the units, out of which 34 units were booked after 19.11.2018 (i.e., after Building Use permission) and the net total of demands raised from rest 215 units only had been taken into consideration. Thus, the above computation of profiteering during the period i.e., post GST period, was with respect to 215 units, out of a total of 258 units sold as mentioned in the home-buyers list.

- 2.20 On the basis of above discussion, it appears that post-GST, the benefit of additional ITC of 3.75% of the turnover accrued to the Respondent for the project "SARATHYA". This benefit was required to be passed on to the recipients but this was not done. Section 171 of the CGST Act, 2017 appears to had been contravened by the Respondent, in as much as the additional benefit of ITC @ 3.75 % of the base price received by the Respondent during the period 01.07.2017 to 30.06.2020, had not been passed on by the Respondent to 215 recipients or home buyers. These recipients were identifiable as per the documents provided by the Respondent, giving the names and addresses along with Unit No. allotted to such recipients. Therefore, the total additional amount of Rs. 2,95,93,850/- (Rupees Two Crore Ninety-Five Lakh, Ninety-Three Thousand and Eight Hundred Fifty only) was required to be returned to such eligible recipients. As observed earlier, the Respondent had supplied construction services in the State of Gujarat only.
- 2.21 As aforementioned, the present investigation covers the period from 01.07.2017 to 30.06.2020. Profiteering, if any, for the period post June, 2020, had not been examined as the exact quantum of ITC that would be available to the Respondent in future could not be determined at that stage.
- 2.22 In view of the aforementioned findings, it appeared that the provisions of 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 by the Respondent i.e., M/s Vishwanath Builders in the present case.
- 2.23 In this Report, any reference to the Central Goods and Services Act, 2017 and Central Goods and Service Tax Rules, 2017, would also include a reference to the corresponding provisions under the relevant SGST/UTGST/IGST Acts and Rules.

3. The above Report dated 26.02.2021 was carefully considered by this Authority and a Notice dated 10.03.2021 was issued to the Respondent to explain why the Report dated 26.02.2021 furnished by the DGAP should not be accepted and his liability for profiteering in violation of the provisions of Section 171 should not be fixed. The Respondent was directed to file written submissions, which had been filed on 15.07.2021 wherein the Respondent had, inter-alia submitted following:-

- a. At the outset, the present proceedings initiated against the Respondent were non-est, without jurisdiction and de hors the provisions of law. The provisions of Section 171 of the Goods and Service Tax Act, 2017 were not applicable to the Respondent as he was in the business of construction services and sale of flats. It was submitted that no act of profiteering was applicable to the Respondent.
- b. The present investigation was pursuant to some frivolous complaint filed by the flat owners who had willingly purchased the flats in the scheme of the Respondent. After negotiations and fixation of price with the Applicants, all the Applicants had purchased the flats. It was now not open for the Applicants to question the price as the price was negotiated between the Respondent and Applicants.
- c. The doctrine of acquiescence and estoppel would be attracted, and the Applicants were estopped from raising any grievance. Had the Complainant raised any concern while purchasing the flats, he would have had right to agitate the same before the Authority. Thus, in absence of any primary objections while purchasing the flats, the Applicants cannot agitate his grievance before the Authority. Therefore, the initiation of the entire investigation was without jurisdiction and was not tenable in law.
- d. The provisions of Section 171 of the Goods and Service Tax Act, 2017 were unconstitutional and were vulnerable to vires. The provisions of Section 171 were being applied by the

Authority discriminatory, even to the suppliers to whom such provisions were not remotely applicable.

- e. Till the date of these submissions, no communication was received enabling the Respondent to avail the complaint filed by the Applicant. Therefore, this reply was filed without having the copy of the complaint in hand and the amount of tax reduction claimed by the Flat holders as the same had not been provided to the Respondent. It goes without saying that in case the abovementioned details were made available.
- f. At the outset, all the contents of the Report dated 26.02.2021 were baseless, contrary to law and were denied. The provisions of the Anti-profiteering more particularly Section 171 of the Central Goods and Service Tax Act, 2017 were not applicable to the answering Respondent.

In addition, the following submissions were made:

**I. CONSTRUCTION ACTIVITIES WAS STAGE WISE**

The construction activity of the Respondent was in phase-wise manner and the ITC Pre-GST and Post-GST were not comparable. The Respondent started the project in the year October, 2016 and Core construction Activity started around August, 2017.

The ITC in pre-GST would be of the services relating to excavation activity. The rate of tax in relation to excavation activity (which took place in pre-GST era) and the construction activities (which took place in post-GST era) could not be compared as both the activities was different. Further the rate of tax in pre-GST and post-GST would also be different as the Respondent was under lump-sum under the VAT Act and, therefore, no ITC credit was availed by the Respondent.

## **II. PRICE OF THE UNIT WAS NOT FIXED**

The units of the flats were not sold at any fixed price or at any MRP. The prices of the units sold by the Respondent depend on various factors viz. demand and supply, location, the floor on which a particular was located, etc. Therefore, the sale consideration could not be taken as a fixed price and varies depending on various factors. Therefore, the provisions relating to anti-profiteering was not applicable to the Respondent.

There could not be fixed price for any residential unit sold by the Respondent as various factors play different role. For example, if 'A' makes a booking of a unit at the time of inauguration, then that person would get a unit at X rate. After a span of 4 month, if 'B' makes booking of a particular unit, then the price of the unit be X+Y as various factor depending on the stage of construction, the location of the unit, etc was taken into consideration.

Therefore, to come to a conclusion that the Respondent had not reduced the price would be an exercise in futile as the units of the project were not sold at fixed MRP unlike the FMCG or catering or food products. By no stretch of imagination could the authority fix price of a unit and calculate the commensurate reduction in price.

## **III. RATE OF VARIOUS PRODUCTS PRE-GST WAS LOWER THAN THE RATE POST GST**

The basis of the entire investigation was on the pretext that the rate of GST was lower than that of the duties levied in the pre-GST era. It might not be out of place to mention the provisions of Section 171 of the GST Act, 2017:

*(1) 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.*

*(2) The Central Government may, recommendations of the Council, by notification, constitute an Authority, or empower an existing Authority constituted under any law for the time being in force, to examine whether input tax credits availed by any registered person or the reduction in the tax rate had actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him.*

*(3) The Authority referred to in sub-section (2) shall exercise such powers and discharge such functions as might be prescribed.*

*(3A) Where the Authority referred to in sub section (2) after holding examination as required under the said sub-section comes to the conclusion that any registered person had profiteered under sub- section (1), such person shall be liable to pay penalty equivalent to ten per cent. of the amount so profiteered.*

*Provided that no penalty shall be leviable if the profiteered amount was deposited within thirty days of the date of passing of the order by the Authority.*

*Explanation. - For the purposes of this section, the expression "profiteered" shall mean the amount determined on account of not passing the benefit of reduction in rate of tax on supply of goods or services or both or the benefit of ITC to the recipient by way of commensurate reduction in the price of the goods or services or both.*

To attract the provisions of Section 171 of the CGST Act, 2017, the Authority had to show that the rate of the GST of various products used by the Respondent were higher in pre-GST era compared to the post GST era there had been a reduction in the rate of tax and thereafter the Respondent had to pass such commensurate reduction to the unit holder. There had been no reduction in tax post-GST in comparison to the pre-GST era and therefore the provisions of Section 171 were not attracted.

The entire investigation had been based on figment of imagination that the rate of tax in post-GST era had been lower than the pre-GST era. However, such conclusion by the Authority was dehors the facts and material on record. No



finding of fact had been arrived by the Authority that there had been reduction in rate of tax and such benefit of commensurate reduction had not been passed to the receiver of the units.

**IV. CALCULATION IN TABLE B WAS FACTUALLY INCORRECT AND DEHORS THE SUBMISSIONS MADE BY THE RESPONDENT**

The Respondent had to reverse his ITC to the tune of Rs. 92,32,807/- as on the closing day of the project. The Respondent had not utilized such ITC or claimed refund of such ITC. In fact, the Respondent had reversed such ITC and had surrendered to the Government. This important fact had not been considered by the Authority and had mechanically passed the order based on some flimsy calculation. Had the DGAP applied his mind and had gone through the documents supplied to it, no such report would have been filed by the DGAP.

If the amount of Rs. 92,32,807/- would have been reduced from total ITC than the resultant ratio would have been different. Therefore, the DGAP had thus erred in not reducing the Total Input Tax Credit.

The present proceedings initiated against M/s. Vishwanath Builders were without the authority of law and contrary to the provisions of law. The provisions of Anti profiteering were not applicable as he had reversed the excess ITC and no benefit of any excess ITC had been claimed by M/s. Vishwanath Builders.

4. Copy of the above submissions dated 15.07.2021 filed by the Respondent was supplied to the DGAP for filing Supplementary Report under Rule 133(2A) of the CGST Rules, 2017. The DGAP filed his clarifications dated 22.03.2022 on the Respondent's submissions and, inter-alia clarified as under:-

- 4.1 The averment made by the Respondent was denied as it was erroneous. Section 171(1) of the CGST Act, 2017 which governs the anti-profiteering provisions under GST, reads as "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." Section 171(1) of the CGST Act, 2017, requires every supplier to pass on the benefit of reduction in rate of tax or the benefit of ITC to his recipients by reducing the price commensurately.

Further, in the erstwhile tax regime (pre-GST), various taxes and cesses were being levied by the Central Government and the State Governments, which got subsumed in the GST. Out of these taxes, the ITC of some taxes was not being allowed in the erstwhile tax regime. In case of construction service, while the ITC of Service Tax was available, the ITC of Central Excise duty paid on inputs was not available to the service provider. Such input taxes, the credit of which was not allowed in the erstwhile tax regime, used to get embedded in the cost of the goods or services supplied, resulting in increased price. With the introduction of GST w.e.f. 01.07.2017, all these taxes got subsumed in the GST and the ITC of GST was available in respect of all goods and services, unless specifically denied. Broadly, the additional benefit of ITC in the GST regime would be limited to those input taxes, the credit of which was not allowed in the pre-GST regime but was allowed in the GST regime. This additional benefit of ITC in the regime was required to be passed on by the suppliers to the recipients by way of commensurate reduction in price, in terms of Section 171 of CGST Act, 2017.

In the instant case, in pre-GST regime, the Respondent was eligible to avail Credit of Service Tax paid on input services only and no credit was available in respect of Central Excise duty paid on the inputs. Further, ITC of VAT was also not available to the Respondent. However, post-GST, the Respondent could avail ITC of GST paid on all the inputs and

the input services. Therefore, the Respondent got additional benefit of the ITC in GST regime which was required to be passed on by the Respondent to the recipients by way of commensurate reduction in price in terms of Section 171 of CGST Act, 2017.

Further, in the instant case, under the provisions of Rule 128 of the CGST Rules, 2017 (hereinafter referred to as "the Rules"), 12 complainants (hereinafter referred to as "the Applicants") who bought the flats in the Respondent's project "VISHWANATH SARATHYA", filed complaints against the Respondent alleging that the Respondent did not pass on the benefit of ITC to him by way of commensurate reduction in price. These complaints were initially examined by the State Level Screening Committee on Anti-profiteering of Gujarat and under Rule 128 of the Rules forwarded the same to the Standing Committee on Anti-profiteering for further necessary action. Under Rule 129 of the Rules, where the Standing Committee was satisfied that there was prima-facie evidence to show that the supplier had not passed on the benefit of reduction in the rate of tax on the supply of goods or services or the benefit of ITC to the recipient by way of commensurate reduction in prices, it shall refer the matter to the Director General of Anti-profiteering for a detailed investigation. Further, the mandate of DGAP was to conduct investigation based on the recommendation of the Standing Committee on Anti-profiteering. In the instant case, the Standing Committee on Anti-profiteering referred the matter to the DGAP for detailed investigation, based on which the investigation was initiated by the DGAP against the Respondent in compliance with the Rule 129(6) of the Rules, the DGAP submitted the investigation report on his findings to the Authority.

From the above facts, it might be inferred that the provisions of Section 171 of the CGST Act, 2017 was applicable in the

instant case and therefore the present proceedings initiated against the Respondent was well within the confines of law.

- 4.2 The contention of the Respondent was incorrect. The Respondent's project "VISHWANATH SARATHYA" was started in the pre-GST regime. Most of the Applicants booked their flats in the Respondent's above said project in pre-GST regime. Therefore, these flat buyers were not even aware of that there would be benefit of ITC of GST in post GST period due to implementation of GST w.e.f. 01.07.2017. Hence, as stated above due to availability of additional ITC in GST period to the Respondent, all the buyers of the project (irrespective of booking in pre or post GST period) were eligible to get due benefit of ITC of GST from the Respondent. Hence, it was incorrect to say that the present investigation initiated on the basis of frivolous complaints filed by the flat owners.
- 4.3 The averment made by the Respondent was not acceptable. As stated above, at the time of booking, the buyers might had agreed to purchase flats at the price arrived after some negotiation but due to availability of additional ITC in GST period to the Respondent, all the buyers of the project were eligible to get his due benefit of ITC of GST from the Respondent. Hence, based on the facts stated supra, the entire proceedings initiated against the Respondent were well within the confines of law.
- 4.4 The contention of the Respondent was denied in toto. Challenging the constitutional validity of Section 171 of the CGST Act, 2017 was erroneous and without any legal backing. The provisions of Section 171 of the CGST Act, 2017 on Anti-profiteering and Rules made thereunder had been passed by the Parliament. The Respondent cannot proceed with an assumption that the Legislature enacting the statute had committed a mistake and where the language of the statute was plain and unambiguous, the Respondent was not at liberty to find a defect but to proceed on a footing to follow the intention.

of the Statute. If the view of the Respondent was accepted the whole exercise of the legislature would be an exercise in futility. Further, the Parliament as well as all the State Legislature had delegated the task of framing of the Rules under the CGST Act, 2017 on the Central Government as per the provisions of Section 164 of the above Act. Accordingly, the Central Government in terms of Section 171 (3) of the CGST Act, 2017 read with Section 2 (87) of the Act, had prescribed the powers and functions of the Authority on the recommendation of the GST Council, which was a Constitutional federal body created under the 101 Amendment of the Constitution, as per Rule 127 and 133 of the CGST Rules, 2017. Therefore, the provisions of the CGST Act, 2017 was neither unconstitutional nor vulnerable to vires.

Further, the contention of the Respondent that the provisions of Section 171 were being applied by the Authority discriminately, even to the suppliers to whom such provisions was not remotely applicable, was incorrect as in the instant case, Section 171 was squarely applicable and proceedings initiated against the Respondent were well within the confines of law.

- 4.5 The averment made by the Respondent was incorrect and false in entirety. The Respondent was provided with an opportunity to inspect the non-confidential evidences/ information submitted by the Applicants during the period 25.08.2020 to 26.08.2020. However, due to prevailing pandemic of COVID-19, the Respondent availed the said opportunity on 29.01.2021 wherein the Respondent inspected all the 12 complaints along with documents of the complaints submitted by the Applicants with their complaints. This was clearly mentioned in Para 5 of the investigation report dated 26.02.2021 submitted by the DGAP. Further, it was mentioned that in his reply dated 29.01.2021, the Respondent alleged that he had not been provided with the copies of complaints along with the Notice dated 07.08.2020 issued by the DGAP and also the Respondent

asserted in his reply that in case, if copies of the complaints were made available to him, he retained his right to amend, alter and rescind his submissions made in that reply dated 29.01.2021. But it was a matter of surprise to the DGAP that the Respondent had claimed the same in this reply dated 15.07.2021 before the Authority even after the Respondent was provided with the copies of all the 12 complaints along with all the documents submitted by the Applicants along with his complaints. This might be corroborated with this fact that the copies of all the complaints along with the documents were made available to him during his visit to the DGAP on 29.01.2021 and the Respondent appended his signature on his reply dated 29.01.2021 in lieu of receiving copies of all the 12 complaints. Hence the contention of the Respondent was false and not tenable.

4.6 As stated above that the present proceeding initiated against the Respondent were well within the confines of law and provisions of Section 171 of the CGST Act, 2017 was squarely applicable to Respondent. Hence, the contention of the Respondent was baseless and denied in toto.

4.7 **Construction activities were stage wise**

The contentions of the Respondent made in these paras under reply were incorrect and not acceptable. It was true that the construction activities take place in various stages but before launching of the any project, the construction service provider always keeps in the mind various stages of the project and cost associated with different stages of the construction activity and accordingly decides the final sale prices of the units to constructed. Therefore, in the cases where projects were launched pre-GST regime, the prices of the flats/units were fixed in pre-GST regime considering the various factors affecting the cost keeping in mind the prevailing taxes, cost of the raw material and input tax credits available. But due to change in tax regime w.e.f. 01.07.2017, as stated above

however, in such case where the project was launched before GST, there had been availability of additional benefit of ITC in GST regime. Therefore, the additional benefit of ITC in post-GST regime which was not available earlier, was required to be passed on by the suppliers to the recipients by way of commensurate reduction in price, in terms of Section 171 of CGST Act, 2017.

In the instant case, the Respondent had himself asserted that he was under composition scheme under VAT Act and no ITC was available to him in pre-GST period. Hence, it was clear that while arriving the final prices of the flats/units to be constructed, the Respondent kept this point in his mind that the ITC of VAT was not available to him and accordingly fixed the minimum prices of the flats/units in pre-GST regime. But after implementation of GST w.e.f. 01.07.2017, the Respondent could avail ITC of GST paid on all input and input services. Therefore, the Respondent had been benefitted with additional ITC in GST period and thus contention of the Respondent was not acceptable.

#### **4.8 Price of the unit was not fixed**

The averments made by the Respondent in paras under reply was denied as erroneous. The DGAP had nowhere alleged in his investigation report that the prices of the units were fixed or there were MRP's of the units/flats constructed by the Respondent. The Respondent was always at his liberty to decide the price of flats/units depending on various factors as asserted by the Respondent. However, the issue was not to examine that the prices of the units/flats were fixed or there were MRPS of the units/flats and whether the Respondent sold the units within the fixed price or at MRP or not. It was true that the prices of the units/flats were agreed upon between the Respondent and flat buyers after negotiations. But, the issue examined by the DGAP was whether there was benefit of increased availment of ITC on the supply of construction service by the Respondent after implementation of GST w.e.f.

01.07.2017 and if so, whether the Respondent passed on such benefit to the recipients/flat buyers by way of commensurate reduction in price, in terms of Section 171 of the CGST Act, 2017. Once the price of any particular unit/flat had been mutually agreed upon between the Respondent and a particular flat buyer after negotiation then due to change in tax regime the benefit of additional ITC accrued to the Respondent was required to be passed on to that particular flat buyer by way of commensurate reduction in the price of the that particular unit/flat. Therefore, the contentions of the Respondent were not tenable.

**4.9 Rate of various products pre-GST was lower than the rate post GST**

The averments made by the Respondent in paras under reply were denied in toto. Section 171 (1) of the CGST Act, 2017 states 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." It was clear from the perusal of the above provision that there were two situations where there could accrue any benefit to the supplier of goods or services. These situations are:

- a. any reduction in rate of tax on any supply of goods or services, or
- b. the benefit of input tax credit.

The benefit, arising due to reduction in GST Rate and due to availability of additional ITC in GST regime, could be pocketed by the supplier of goods and services. Therefore, the provisions of Anti profiteering were brought under GST with an objective to restrain supplier from pocketing the benefit of GST rate reduction and benefit of enhanced ITC, and obligating supplier to pass on such benefits to the recipients of goods and services.



In the instant case, the Respondent had been benefitted with additional ITC in GST regime which was required to be passed on to the service recipients of the Respondent. In the investigation report, nowhere it had been alleged or concluded that there was any benefit to the Respondent on account of GST rate reduction. Hence the contentions of the Respondent that the entire investigation had been based on figment of imagination that the rate of tax in post-GST era had been lower than the pre-GST era, were baseless and incorrect

**4.10 Calculation in Table B was factually incorrect and dehors the submissions made by the Respondent**

The contentions of the Respondent were erroneous as again the Respondent had misinterpreted the facts/figures of the Table-B of the investigation report. In this regard it was clarified that the Respondent was availing ITC of GST paid on all the inputs and input services being used in the entire project whereas the Respondent was eligible to utilize the ITC in respect of sold area in the project. This was because the Respondent could utilize the ITC in payment of output GST liability which would always arrive at the time of raising demands or receiving advances from the flat/unit buyers who had booked his flats/units in the Respondent's project. Since, no demands could be raised/advance received against the unsold units, there would be no liability of GST payment against such unsold units and hence no ITC could be utilized against these units. Therefore, the remaining ITC pertaining to the unsold area was required to be reversed at the time of obtaining the completion/occupancy certificate of the project.

Accordingly, in the investigation report also, the ITC proportionate with the sold area only had been considered by the DGAP implying that the ITC amount of Rs.92,32,807/- which was to be reversed by the Respondent was already out of the purview of computation of profiteering. If this amount was reduced from the total ITC available then would render double

benefit to the Respondent. Therefore, the averments of the Respondent were incorrect and not tenable.

On the basis of above clarifications, the provisions of Anti-profiteering were squarely applicable in this case and therefore, the proceedings initiated against the Respondent were well within the confines of the law.

5. The Respondent, vide his rejoinder dated 05.05.2022 to the above clarifications of the DGAP, submitted as under:-

5.1 He reiterated that the present proceedings initiated against the him were non-est, without jurisdiction provisions of law. The provisions of Section 171 of the Goods and Service Tax Act, 2017 was not applicable to the Respondent as the Respondent was in the business of construction services and sale of flats. Act of profiteering was applicable to the Respondent.

5.2 Section 171, and in particular Section 171 (1) of the CGST Act vests unbridled, uncanalised and arbitrary powers upon the Executive. Also, it assumes that a reduction in rate of tax would result in equivalent reduction in prices, does not take into consideration the increase in costs, and does not provide for any guidelines, including in relation to the timeframe for which the reduction in sale-price, was required to be maintained.

5.3 The anti-profiteering provisions of the GST Act, mandate manufacturers/marketers to effect commensurate reduction in price consequent to tax rate reduction but do not specify the period up to which such reduction was required to be maintained. The absence of period up to which such reduction was required to be passed on, makes the provisions manifestly arbitrary, imposes unreasonable restriction and violates the fundamental right to carry on business and trade. Thus Section

171(1) of the GST Act, was violative of Article 14 and 19 (1) (g) of the Constitution of India.

- 5.4 Also, the legislature had not prescribed any guiding principles in the context of "commensurate reduction in prices", contemplated in Section 171 (1) of the CSGST Act. The absence of prescription in law and vesting of absolute discretion in the investigation authorities (DGAP), enables the authorities to assume arbitrary and unbridled power. Consequently, the investigation authority had assumed that "commensurate reduction in prices" must be passed on, only in monetary terms, which was unworkable.
- 5.5 Section 171 (2) makes provision for constitution of the Authority, for determining the commensurate reduction in price on decrease in tax, etc. and Section 171 (3) provides that the Authority would exercise such powers as might be prescribed by the CGST Rules. Section 171 (3) does not lay down any policy, guideline, principles, or standards regarding the powers to be exercised by Authority, much less about the manner in which such powers was to be exercised.
- 5.6 Parliament/Legislature must lay down the policy, principle and/or standard for the guidance of the authority concerned. The Hon'ble Supreme Court had held that a statute must be definite and not uncertain; it should not be ambiguous or vague. Requisite guidelines in respect thereof should be laid down under the statute itself.
- 5.7 Though in terms of Section 171(3), the powers of Authority had been set out in Rule 126, no guiding principles or policy for the exercise of such powers, viz. determination of methodology and procedure had been laid down, thereby leaving it to the subjective satisfaction of the Authority, and thus open to abuse and arbitrariness.

- 5.8 When the power conferred on an authority was an arbitrary power, unregulated by any rule or principle and it was left entirely to the discretion of the particular authority, to do anything it might like (without any check or control), it was unconstitutional. It had also been held that decisions should be made an authority, applying known principles and rules and in general such decisions should be predictable, so that the affected party knows his position. If a decision was taken without any principle without any rule, unpredictable and such decision would be the antithesis of a decision taken in accordance with the rule.
- 5.9 The anti-profiteering provisions also violate Article 19 (1) (g) of Constitution and same saved by Article (6) the Constitution. The Hon'ble Supreme Court laid down the law that any price fixation must secure reasonable return capital employed. If it does secure a reasonable return to the investor, would violate Article 19 (1) (g) the Constitution. For a provision of comply with the test interest, between reasonable restriction it contains freedoms in public proper balance guaranteed under the Constitution of India and the control permitted under Article 19 (6) of the Constitution. It was submitted that while determining the alleged profiteered amount, the DGAP as well as the Authority was obliged to take into account the increase in the cost of inputs, production costs and all other relevant factors, so that the investor secures a reasonable return on the capital employed.
- 5.10 Rule 127(iii) (b) and Rule 133 (3) (b)) (c) imposes interest @ 18% p.a. on the profiteered amount from the date of collection of profiteered amounts to the date of return or recovery of such amount.
- 5.11 The CGST Act and in particular Section 171 thereof, do not provide for imposition of interest on the profiteered amount. The Hon'ble Supreme Court in para 30 of Shree Bhagwati

Rolling Hills and in para 6 of his Judgment in V.V.B. Sugar Vs. State of Andhra Pradesh [(1999) 4 SCC 192] had held that imposition of interest could only be sustained if the parent Act itself had a substantive provision for imposition of interest. The CGST Act and in particular Section 171 do not provide for the imposition of interest on the profiteered amount in cases 127 (iii) (b) provide violative for of alleged profiteering. Thus, Rule and Rule imposition 133 (3) (b) & (c), of interest which was of Articles 14 and 19 (1) (g) of the Constitution of India.

- 5.12 Rule 122 provides that Authority would consist of a chairman and four Technical Members, who are or had been bureaucrats. The Authority was a body entrusted with adjudicatory functions. Rules 126 and 127 respectively lay down the powers and duties of the Authority.
- 5.13 Rule 132(1) empowers Authority to summon any person for giving evidence or to produce a document or any other thing under Section 70 of CGST Act and shall had the powers in any inquiry as that of a Civil Court under CPC. Rule 132 (2) provides that the inquiry under Rule 132 (1) shall be deemed to be a judicial proceeding within the meaning of Section 193 and 228 of IPC.
- 5.14 Under Rule 133(1), the Authority was enjoined to pass an Order within a period of 6 months from the date of receipt of the report of DGAP. In terms of Rule 133(2), an opportunity of hearing was to be afforded to parties by Authority in case a request to that effect was received. Under Rule 133 (2A), the Authority was empowered to seek clarification from DGAP on the report submitted by him. In terms of Rule 133 (3), if the Authority comes to finding of non-passing of the benefit, it might pass orders as provided in Rule 127 and in addition thereto direct imposition of penalty as specified under the CGST Act. Further, in accordance with Rule 133(4), if the Authority on a consideration of the report of the DGAP, was of

the opinion that further investigation or inquiry. was required, it was empowered to refer the matter to the DGAP to cause further investigation or inquiry.

5.15 On 28.06.2019, Rule 133 (5) was inserted in the CGST Rules and it empowers the Authority to cause investigation or inquiry into other products, if on a consideration of the report of the DGAP, the Authority had reasons to believe that there had been a contravention of the provisions of Section 171 of CGST Act in respect of goods and services other than these covered in the DGAP report.

5.16 Thus, it was clear that the Authority performs adjudicatory functions for determining whether the benefit of reduction in tax had been passed on to the recipient, and if not, it was empowered to summon inquiry, any person, take evidence, hold afford opportunity of hearing, impose penalty, cancel registration, etc.

5.17 The Authority was therefore a quasi-judicial authority as per the principles laid down by the Hon'ble Supreme Court in para 18 of his judgment in State of Gujarat Vs. Gujarat Revenue Tribunal Bar Association [(2012) 10 SCC 353] wherein it was held that where a statutory authority was required to decide a dispute, such an authority might be called as a quasi-judicial authority, in a called situation where:

(a) a statutory authority was empowered under statute to do any act;

(b) the order of such authority would adversely affect the subject;

(c) although there was no lis or two contending parties, and the contest was between the authority and the subject; and

(d) the statutory authority was required to act judicially under the statute, the decision of the said authority was a quasi-judicial decision. An authority might be described as a quasi-

judicial authority when it possesses certain attributes or trappings of a "court", but not all.

5.18 The Authority satisfies the aforesaid conditions and was therefore a quasi-judicial authority. Also, the Hon'ble Supreme Court in para 116 of his judgment in State of Gujarat Vs. Utility Users Welfare Association [(2018) 6 SCC 21] had held that once an authority had the trappings of a Court and performs judicial functions, albeit limited but which might have far-reaching effect, the presence of a member having knowledge of law would be necessary. Further, presence of a member having knowledge of law does not imply that any person from the field of law could be picked up. It must be a person, who is, or had been holding a judicial office or was a person possessing professional qualifications with substantial experience in the practice of law, who had the requisite qualifications to had been appointed as a Judge of the High Court or a District Judge.

5.19 Appointment of a judicial member was a *sine qua non* for any authority which was performing judicial functions of determining rights and liabilities of person. To the extent an authority undertakes such functions, it was acting in the capacity of a 'court' and therefore it becomes imperative to appoint a judicial member with expertise and experience in dealing interpretational issues.

5.20 In the light of the aforesaid position in it was respectfully submitted that the law, presence of a judicial member was imperative on the Authority and absence thereof violates the basic structure of the Constitution of India in as much as the doctrine of separation of powers and principles of judicial review was undermined. Thus Rule 122 of the CGST rules was unconstitutional.

5.21 The present proceedings initiated against M/s. Vishwanath Builders was without the authority of law and was contrary to the provisions of law. It was submitted that the provisions of

Anti-profiteering were not applicable as he had reversed the excess ITC and no benefit of any excess ITC had been claimed by M/s. Vishwanath Builders.

6. 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 personal hearing was held on 16.06.2022 which was attended by Applicants and the Respondent. The Respondent, during such personal hearing, had re-iterated his previous submissions dated 15.07.2021 and 05.05.2022.
7. 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 30.06.2020. The DGAP has concluded that, the benefit of additional Input Tax Credit of 3.75% of the turnover has accrued to the Respondent for the project "Sarathya". 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 @3.75% of the base price received by the Respondent during the



period 01.07.2017 to 30.06.2020, has not been passed on by the Respondent to 215 recipients including the Applicants. 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. 2,95,93,850/- which includes 12% GST (i.e. Rs. 31,70,770/-) on the base profiteered amount. The period of investigation covers the period from 01.07.2017 to 30.06.2020. The ITC pertaining to the unsold units/units sold after BU permission was outside the scope of the current investigation. The current investigation was also limited to the project 'Sarathya' only.

8. Having gone through the facts of the case records and the given facts and circumstances, the findings of this Authority on the submissions of the Respondent are as under:

8.1 The Respondent has submitted that, Section 171, in particular Section 171(1) of the CGST Act, 2017, vests unbridled and arbitrary powers and does not take into consideration the increase in costs, and does not provide any timeframe for which the reduction in Sale price, was required to be maintained.

This Authority finds that, 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 relevancy 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. If the contracting parties. In such situations of providing of insulation of rising prices, then provision for "Escalation clause" should be there in the agreement. None of such clauses were informed by the Respondent.

8.2 The Respondent has submitted that, they had to reverse ITC to the tune of Rs.92,32,807/- as on the closing day of the project. The Respondent had not utilized such ITC or claimed refund of such ITC. In fact, the Respondent had reversed such ITC and had surrendered to the Government. This important fact had not been considered by the Authority and had mechanically passed the order based on some flimsy calculation. Had the DGAP applied his mind and had gone through the documents supplied to it, no such report would have been filed by the DGAP. If the amount of Rs.92,32,807/- would have been reduced from total ITC than the resultant ratio would have been different. Therefore, the DGAP had thus erred in not reducing the Total Input Tax Credit.

This Authority finds that, Respondent was availing ITC of GST paid on all the inputs and input services being used in the entire project whereas the Respondent was eligible to utilize the ITC in respect of sold area in the project. This was because the Respondent could utilize the ITC in payment of output GST liability which would always arrive at the time of raising demands or receiving advances from the flat/unit buyers who had booked his flats/units in the Respondent's project. Since, no demands could be raised/advance received against the unsold units, there would be no liability of GST payment against such unsold units and hence no ITC could be utilized against these units. Therefore, the remaining ITC pertaining to the unsold area was required to be reversed at the time of obtaining the completion/occupancy certificate of the project.

Accordingly, in the investigation report the DGAP had already considered only the ITC proportionate with the sold area, hence, the ITC amount of Rs.92,32,807/- which was to be reversed by the Respondent was already out of the purview of computation of profiteering in the said Investigation Report. If this amount was reduced from the total ITC available again,

then that would render double benefit to the Respondent. Therefore, this contention of the Respondent is not tenable.

- 8.3 The Respondent has contended that the investigation is pursuant to the complaint filed by the buyers who willingly purchased the flats after negotiations and fixation of prices with him and in absence of any primary objections raised while purchasing the flats, the Applicants cannot agitate their grievances before the Authority.

This Authority finds that, Section 171(1) of the CGST Act, 2017 which governs the anti-profiteering provisions under GST, reads as "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." Section 171(1) of the CGST Act, 2017, requires every supplier to pass on the benefit of reduction in rate of tax or the benefit of ITC to his recipients by reducing the price commensurately.

Had it been mentioned in the Buyers-Seller Agreement that the Respondent has passed on the due benefit of additional ITC to the recipients as per Section 171 of the CGST Act, 2017, the Respondent's contention could have been considered. However, the Respondent has failed to produce any such evidence, hence, his contentions are found to be untenable.

- 8.4 The Respondent has contended that the construction activities are stage wise and the ITC pre-GST and post-GST are not comparable.

In relation to the above, the Authority finds that there is correlation between the Turnover and the cost of construction as the Respondent is raising demands on the basis of the completion of each stage of the development of the project. The raising of demand has no correlation with the market driven strategies of the Respondent. Accordingly, the Respondent is

earning ITC on the basis of the material purchased by him for each stage. Even if he has received advances from the buyers, he is applying the same to purchase material as per the development plan circulated by him to the buyers. The Respondent is also liable to pass on the benefit of ITC in case he sells the flats before receiving the Completion Certificate. Therefore, the Authority finds that the above contention is wrong and accordingly, the comparison of the ratios for passing on the benefit of ITC is correct as per the provisions of Section 171 of the CGST Act, 2017.

- 8.5 The Respondent has contended that the prices of the units were not fixed for any residential units as various factors play different role and are not sold on a fixed MRP.

The Authority finds that Section 171 of the CGST Act, 2017 does not say anything about having a fixed price for the units or selling the units at an MRP. The Respondent was always at his liberty to decide the price to sell his units to the recipients. The issue under discussion is whether the benefit of additional benefit of ITC on supply of construction services provided by the Respondent after the implementation of GST w.e.f. 01.07.2017, has been passed on to the recipients or not. In terms of Section 171 of the CGST Act, 2017, the benefit of additional ITC availed by the Respondent after the implementation of the GST was to be passed on to the recipients.

- 8.6 The Respondent has contended that the rates of tax on various products pre-GST were lower than the rate post-GST.

This Authority finds that, Section 171 (1) of the CGST Act, 2017 states 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.*" It was clear from the perusal of the above provision that there were

two situations where there could accrue any benefit to the supplier of goods or services. These situations are:

- a. any reduction in rate of tax on any supply of goods or services, or
- b. the benefit of input tax credit.

In the instant case, from Table – B *supra*, it is evident that the Respondent had been benefitted with additional ITC by 3.75% in GST regime which was required to be passed on to the service recipients of the Respondent. In the investigation report, nowhere it had been alleged or concluded that there was any benefit to the Respondent on account of GST rate reduction. Hence, the contentions of the Respondent were not sustainable.

- 8.7 The Respondent has submitted that, the anti-profiteering provisions of the CGST Act, 2017 do not specify the period up to which such reduction is required to be maintained. Thus, it is violative of Article 14 and 19 (1)(g) of the Constitution of India.

This Authority finds that, the intent of this provision is the welfare of the consumers who are voiceless, unorganised and vulnerable. This Authority is charged with the responsibility of ensuring that the both the above benefits are passed on to the general public as per the provisions of Section 171 read with Rule 127 and 133 of the CGST Rules, 2017. Hence, the anti-profiteering related Rules and Section 171 of the Act have express approval of the Parliament, all the State Legislatures, the Central and all the State Governments and the GST Council and therefore, Section 171 and the Rules are constitutional and are not violative of Article 14 and 19 (1) (g) of the Constitution. This Authority has nowhere interfered with the business decisions of the Respondent. He can also fix his prices and profit margins in respect of the supplies made by him. Under Section 171 this Authority has only been mandated to ensure that both the benefits of tax reduction and ITC which are the

sacrifices of precious tax revenue made from the kitty of the Central and the State Governments are passed on to the end consumers who bear the burden of tax.

- 8.8 The Respondent has submitted that, Section 171(3) of the CGST Act, 2017 does not lay down any policy/principles/standards for the guidance regarding the powers to be exercised by the Authority viz. determination of methodology and procedure.

This Authority finds that, as per Rule 126 of the CGST Rules, 2017, this Authority has been empowered to determine the methodology and procedure for determination as to whether the reduction in the rate of tax or the benefit of ITC has been passed on by the registered person to the recipients by way of commensurate reduction in prices. This Authority in exercise of power delegated to it under the Rule 126 has notified the Methodology & Procedure vide Notification dated 28.03.2018 which was also available on the website. However, no fixed/uniform mathematical methodology can be determined for all the cases of profiteering as the facts and circumstances of each case as well as the nature of goods or services supplied in each case differ. Therefore, the determination of the profiteered amount has to be computed by taking into account the particular facts of each case. The computation of commensurate reduction in prices was purely a mathematical exercise which was based upon the above parameters and hence it would vary from product to product and hence no fixed mathematical methodology can be prescribed to determine the amount of benefit which a supplier was required to pass on to a recipient or the profiteered amount.

- 8.9 The Respondent has submitted that, Section 171 of the CGST Act, 2017 does not provide for imposition of interest on the profiteered amount. The Respondent has put reliance upon the Hon'ble Supreme Court's Order in Shree Bhagwati Rolling

Hills and in V.V.B. Sugar Vs. State of Andhra Pradesh [(1999) 4 SCC 192].

This Authority finds that, such contention of the Respondent is not correct as the Authority has been conferred with power to impose interest at the rate of 18 percent under Rule 133 (3) (b) of the CGST Act, 2017.

It is also to be noted that Rule 133 (3) of the CGST Rules, 2017 clearly states that the Authority can order the Supplier to return to the recipients, an amount equivalent to the amount not passed on by way of commensurate reduction in prices along with interest @18% from the date of collection of the higher amount till the date of the return of such amount. It is also submitted that the Parliament as well as all the State Legislatures have delegated the task of framing of the Rules under the CGST Act, 2017 on the Central Government as per the provisions of Section 164 and 171 (3) of the above Act and the Central Government has accordingly framed the above Rule.

Further, it is observed that the Respondent has utilized the amount of benefit of ITC in furtherance of his business by denying the benefit of ITC to the buyers. And hence he is liable to pay interest on the same. Therefore, the decision in the case of Shree Bhagwati Rolling Hills and in V.V.B. Sugar Vs. State of Andhra Pradesh [(1999) 4 SCC 192] is not applicable in the present case.

8.10 The Respondent has contended that in the absence of a Judicial Member, the constitution of this Authority is improper.

This Authority finds that, Section 171 (2) of the CGST Act, 2017 provides for the role of this Authority as "to examine whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or

both supplied by him." The duties of this Authority have been further elaborated in Rule 127 of the CGST Rules, 2017 which reads as follows:-

- "127. Duties of the Authority.- It shall be the duty of the Authority,-*
- (i) to determine whether any reduction in the rate of tax on any supply of goods or services or the benefit of input tax credit has been passed on to the recipient by way of commensurate reduction in prices;*
  - (ii) to identify the registered person who has not passed on the benefit of reduction in the rate of tax on supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices;*
  - (iii) to order,*
    - (a) reduction in prices;*
    - (b) return to the recipient, an amount equivalent to the amount not passed on by way of commensurate reduction in prices along with interest at the rate of eighteen percent, from the date of collection of the higher amount till the date of the return of such amount or recovery of the amount not returned, as the case may be, in case the eligible person does not claim return of the amount or is not identifiable, and depositing the same in the Fund referred to in section 57;*
    - (c) imposition of penalty as specified in the Act; and*
    - (d) cancellation of registration under the Act.*
  - (iv) to furnish a performance report to the Council by the tenth day of the close of each quarter."*

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The aforementioned duties clearly do not involve settling of any question of law and these are the expert functions being discharged by the domain experts who have experience in the field of indirect taxation. Therefore, the sequitur of the discussion above is that (a) this Authority has not replaced or substituted any function which the Courts were exercising hitherto (b) it was performing quasi-judicial functions but it cannot be equated with a judicial Tribunal (c) it performs its functions in a fair and reasonable manner in accordance with the Act but does not have the trappings of a Court and (d)



absence of a Judicial Member does not render the constitution of this Authority unconstitutional or legally invalid.

Further, there are several statutory bodies which exercise quasi-judicial functions but they are not required to be composed of Judicial Members. There is no Judicial Member in the SEBI which has been constituted under the Securities and Exchange Board of India Act, 1992. Neither the statute nor any decision of the Court requires the SEBI to be composed of a Judicial Member simply because it also performs quasi-judicial functions under the Act apart from its other roles. SEBI's composition has been provided in Section 4 (1) of the aforementioned Act. The Hon'ble Supreme Court in the case of Clariant International Ltd. & Anr. v. Securities and Exchange Board of India (2004) 8 SCC 524 has held that SEBI exercises its legislative power, executive power and judicial power:-

*"77. The Board exercises its legislative power by making regulations, executive power by administering the regulations framed by it and taking action against any entity violating these regulations and judicial power by adjudicating disputes in the implementation thereof."*

Similarly, the TRAI which also performs quasi-judicial functions has been constituted under the Telecom Regulatory Authority Act, 1997 but does not have a Judicial Member. Section 3 of the said Act provides for the composition of the Authority. Again, the Medical Council of India has been constituted under the Indian Medical Council Act, 1956. The various disciplinary powers which it exercises under the Act can be said to be quasi-judicial in nature but it does not require a Judicial Member in its Council. The constitution and composition of the Council is provided in Section 3 of the said Act. The Institute of Chartered Accountants of India has been constituted under the Chartered Accountants Act, 1949. The ICAI also exercises quasi-judicial functions over its registered members and can pass orders which have far reaching

consequences affecting the rights of Chartered Accountants but even its composition does not require a Judicial Member's presence. Its composition is provided in Section 9 (2) of the above Act and the same does not include a mandatory Judicial Member.

Similarly, the Assessing Officers, Commissioners of Appeal under the Income Tax Act, 1961 and the CGST Act, 2017, the Authorities on Advance Rulings under both the above Acts and the Dispute Resolution Panel under the Income Tax Act, 1961 all perform quasi-judicial functions but there is no requirement that such persons must be possessing either a law degree or have had judicial experience. Such a requirement is not only impractical but would also render several statutory authorities unworkable, which could never have been the intention of the Hon'ble Supreme Court while laying down the legal principles discussed above.

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It is also to be noted that this Authority has been constituted as per Section 171 (2), 171 (3) read with Rule 122 of the CGST Rules, 2017. The said Act or the Rules, nowhere mention requirement of a Judicial Member in this Authority. The Parliament, the State legislatures, the Central and the State Government as well as the GST Council in their wisdom, have not found it expedient to constitute this Authority by providing a Judicial Member in this Authority. Therefore, in light of the above, it can be concluded that this Authority has not replaced any Courts, cannot be equated to a Court or a Tribunal. Hence, the submissions made by the Respondent regarding the unconstitutionality of the Authority are devoid of any legal merit. Moreover, the orders passed by this Authority are subject to judicial review and hence no prejudice would be caused to the Respondent.

9. In view of the above facts, the Authority finds no reason to differ from the above-detailed computation of profiteering in the DGAP's

Report or the methodology adopted. The Authority finds that the benefit of additional Input Tax Credit of 3.75% of the turnover has accrued to the Respondent for the project "Sarathya". 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 @3.75% of the base price received by the Respondent during the period 01.07.2017 to 30.06.2020, was required to be passed on by the Respondent to 215 recipients including the Applicants. 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 profiteered an amount of Rs.2,95,93,850/-.

10. 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 homebuyers/customers/ recipients commensurate with the benefit of ITC received by him. The details of the homebuyers/customers/recipients and benefit which is required to be passed on to each homebuyers/customers/recipients (including all the 12 Applicants) 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.
11. 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 homebuyers/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 30.06.2020, 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 in operation during the period from 01.07.2017 to 30.06.2020 when the Respondent had committed the above violation. These provisions came into effect from 01.01.2020 i. e. penalty equivalent to ten per cent of the profiteered amount will be imposed upon him for the amount profiteered after 01.01.2020. However, no penalty shall be leviable if the profiteered amount is deposited within thirty days of the date of passing of the order by the Authority. In this regard, Notice be issued to the Respondent.

12. 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/recipient, 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 Vishwanath Builders, Project - "Sarathya", Location- Ahmedabad, Gujarat and amount of profiteering Rs.2,95,93,850/- so that the Applicants 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](http://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.
13. The Authority finds that the Respondent may also be executing other projects under the same GST Registration No. 24ABEPV6263D1ZN and the issue of profiteering may arise in the other projects as well. In

view of the observation made in the earlier paragraph, the Authority finds that there exists reason to investigate other projects for the purpose of determination of profiteering. Accordingly, this Authority as per the provisions of Section 171 (2) of the above Act take suo-moto cognizance of the same and in terms of Rule 133(5) of the said Rules, directs the DGAP to conduct investigation in respect of the other projects executed under the said registration and submit Report to this Authority for determination whether the Respondent is liable to pass on the benefit of ITC in respect of the other projects/towers to the buyers or not as per the provisions of Section 171 (1) of the above Act.

14. Further, this Authority as per Rule 136 of the CGST Rules 2017 directs that 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 receipt of this Order.
15. 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.

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

**Encls: Annexure A List of buyers with details of determined profiteered amount (5 pages)**

Sd/-  
(Amand Shah)  
Technical Member &  
Chairman



Sd/-  
(Pramod Kumar Singh)  
Technical Member

Sd/-  
(Hitesh Shah)  
Technical Member

Certified Copy

  
(Dinesh Meena)  
Secretary, NAA

F. No. 22011/NAA/40/Vishwanath Builders/2021/8328-8346 Dated: 26.08.2022

**Copy to:-**

1. M/s Vishwanath Builders, 17, N.D. Avenue, opp. Club 07, Sky City Road, Off S P Ring, Shela, Ahmedabad- 380058.
2. Sh. Mahendra Kishanlal Prajapati, Block E-302, Vishwanath Sarathya, Opp. Club 07, Sky City Road, Shela, Ahmedabad-380058.
3. Sh. Sahil Patel, C-701, Vishwanath sarathya, 10 ND Avenue, Opp. Club 07, off SP Ring road, Shela Ahmedabad-380058.
4. Smt. Meghana Vishal Malkan, B-601, Vishwanath Sarathya, opp. Club 07 Off SP Ring Road Shela Ahmedabad-380058.

5. Sh. Khushal Dhabhi, B904, Vishwanath Sarathya, opp. club 07 Lane, Near Mather Homes, Sky City Shela Road, Shela Ahmedabad-380058.
6. Sh. Trunal P. Kansara, C-302, Vishwanath sarathya, 10ND avenue, opp. club 07, Off S.P Ring road, Shela, Ahmedabad-380058.
7. Sh. Kanhai Patel, C-1204, Vishwanath sarathya, 10, ND Avenue, Opp. club 07, Shela, Ahmedabad, 380058 Gujarat.
8. Sh. Chetan Parmar, E-202, Vishwanath sarathya, opp. club 07, 10 ND Avenue, off S.P Ring road, Shela, Ahmedabad-380058.
9. Sh. Dhaval Trivedi, D-802, Vishwanath sarathya, 10, N.D. Avenue, opp. club 07, Shela road, shela, Ahmedabad 380058.
10. Sh. Nakul Murani, B-302, Vishwanath sarathya, 10 ND Avenue, Opp. club 07, sky city road, off SP Ring Road, Shela, Ahmedabad 380058.
11. Sh. Jitu Mistry, C-1104 Vishwanath sarathya, 10 ND Avenue, Opp. club 07 shela, Ahmadabad 380058.
12. M.R. Joshi, B-404, Vishwanath Sarathya, 10 ND Avenue, Opp. 07 Club, Sky City Road, Off. SP Ring road, shela, Ahmedabad-380058.
13. Sh. Jamanbhai C Mungara, C-1103 Vishwanath Sarathya, 10 ND Avenue opp. Club 07 shela, Ahmedabad 380058.
14. Chief Commissioner of Central Goods & Services Tax (Ahmedabad zone) 7th floor, CGST bhavan, Revenue Marg, opp. poly., Ambawadi, Ahmedabad-380015.
15. Commissioner, Department of Gujarat State Tax, Government of Gujarat, Rajya Kar Bhavan, Ashram Road, Ahmedabad-380009 Gujarat.
16. Chairman Gujarat Real Estate Regulatory Authority 4th Floor, Sahyog Sankul, Sector-11, Gandhinagar-382010.
17. Chief Town Planner, Town Planning & Valuation Department Office of the Chief Town Planner Opp St. Xaviers School, Road No. 3, Sector-10/A Gandhinagar-382010.
18. Directorate General of Anti-Profitteering, Central Board of Indirect Taxes & Customs, 2<sup>nd</sup> Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, New Delhi-110001.
19. Guard File.

ANNEXURE - A				
Home Buyer's List in respect of M/s Vishwanath Builders Pvt. Ltd.				
Sr. No.	Name of Customer	Unit No.		Final Benefit to be passed on including GST
1	Manzil Dineshkumar Shah H U F	A	101	92,400
2	Anilkumar A. Patel & Jignishaben A. Patel	A	102	1,02,459
3	Sandhya Singh & Balbeersingh Rathour	A	103	1,95,878
4	Neha Manzil Shah	A	104	92,400
5	Nimit Narendrakumar Shah	A	201	1,05,000
6	Nileshkumar B. Soni & Swati N. Soni	A	202	1,53,300
7	Kumudben H. Bhatt & Hiteshkumar R. Bhatt	A	203	1,06,979
8	Omprakash B. Agrawal	A	204	84,000
9	Dhiren Jayendrabhai Shah	A	301	1,40,675
10	Dhaval J Shah	A	302	1,40,675
11	Dhaval J. Shah	A	303	1,52,225
12	Niraj Jayendrabhai Shah	A	304	1,40,675
13	Dipa S. Chokshi & Shital N.Chokshi	A	402	1,11,594
14	Prakash Hargovindas Vaghela	A	404	84,000
15	Sunita Rajesh Jesani	A	501	1,49,168
16	Jaydeep N. Patel	A	502	1,13,553
17	Jagdish M. Khamar & Pratik J. Khamar	A	503	1,09,390
18	Yatishkumar G. Rughani & Ameer Y. Rughani	A	504	92,400
19	Kandarp A. Shah & Parulben A.Shah	A	602	1,21,324
20	Falgun D.Pathak & Foram F.Pathak	A	603	1,86,837
21	Riya P. Lakhani & Pankajkumar K. Lakhani	A	604	1,08,486
22	Shreya R. Raval & Rashmin A. Raval	A	701	1,17,240
23	Chintan Arvindbhai Teraiya	A	703	1,26,000
24	Maulik A.Shah & Dipal M Shah	A	704	75,495
25	Ketan M. Barad & Laduben M.Barad	A	801	84,756
26	Bhairavi Chirag Shah & Chirag P. Shah	A	802	1,37,539
27	Nirali S.Kavishwar & Swapnil U. Kavishwar	A	803	1,59,836
28	Kirtan P. Trivedi & Dhara K. Trivedi	A	804	1,52,001
29	Swari P. Patel & Pavan K.Patel	A	901	1,06,075
30	Shashikant N. Chaudhari & S. S.Chaudhari	A	903	93,057
31	Asha Bhavik Rachh & Bhavik S. Rachh	A	904	84,000
32	Jainika Nanavati & Sharmil Nanavati	A	1002	1,12,464
33	Ramesh S. Bhojwani & Secma R. Bhojwani	A	1004	1,24,367
34	Hematlal A. Dangar & Jyoti H. Dangar	A	1101	1,76,610
35	Bhumin M. Vadalia & Mukesh C. Vadalia	A	1102	1,34,736
36	Aditi Mihir Patwa & Mihir Shekharbhai	A	1103	1,47,059
37	Meeta Laxmansingh Solanki	A	1104	1,20,540
38	Reema Ketan Bhimani & Ketan A. Bhimani	A	1201	1,05,774
39	M.R.Fuletra & P. P. Patel & F.H.Supovadia	A	1202	1,08,787
40	Milan J. Cholera & Jalpa M. Cholera	A	1203	1,92,864
41	Bankim Indravadan Mehta & Komal B.Mehta	A	1204	1,08,486
42	Ripunjay Gajjar & Dimpal Shroff	A	1303	1,74,301
43	Jitendra S.Ramanni & Disha J. Ramani	A	1304	1,18,491



44	Nisarg K Shah	B	103	1,36,917
45	Sandip K. Chudasama & Chandni S. Chudasama	B	201	1,13,383
46	Aarti Rshesh Shah	B	202	1,15,538
47	Dhaval V. Upadhyaya & Dipti D. Upadhyaya	B	203	1,20,239
48	Nitin R. Bhatt & Parul Bhatt	B	301	1,80,810
49	Nakul B. Murani & Nimisha N. Murani	B	302	1,86,234
50	Dr. Mukul R. Jain	B	303	1,39,826
51	Krutarth A. Thakkar & Avinash Thakkar	B	304	1,20,540
52	Vinayak R. Kamat & Sujata V. Kamat	B	401	1,55,617
53	Hemen Kotecha & Rina H Kotecha	B	402	1,16,321
54	Jay M. Joshi & Mansukhlal Joshi & H.M. Joshi	B	404	1,20,540
55	Purvi Vismit Vyas & Vismit N. Vyas	B	501	1,55,400
56	Manojkuamr Pariyani & Preeta Manoj Kumar	B	502	1,34,662
57	Minaben P. Kothari & Harshdray M. Modi	B	503	1,24,761
58	Patel Sureshbhai A.	B	504	1,41,032
59	Meghna V. Malkan	B	601	1,42,237
60	Chandrashekhar V. Kulkarni	B	602	1,80,810
61	Chintan U. Naik & Krishna C. Naik	B	604	92,400
62	Harshida Rashmikant	B	701	1,45,612
63	Megha V. Bagaria & Vineet Bagaria	B	702	89,441
64	Megha K. Shukla & Karan Sanjay Shukla	B	703	1,06,075
65	Vandana C. Swarnkar & Chirag Swarnkar	B	704	1,35,005
66	Gurjan Taunk & Ruchita Taunk	B	802	1,55,557
67	Shweta P Bhagwat & Pratik P. Bhagwat	B	803	1,80,810
68	Ravi D. Lakhani & Komalben R. Lakhani	B	804	1,77,797
69	Purvak Bankimbhai Pathak & Rutu Pandya	B	901	1,79,303
70	Ankita P. Limbachiya & P. S. Limbachiya	B	902	1,26,205
71	Jyotsanaben R. Dabhi	B	904	1,77,797
72	Sheetal Vijay Parmar & Vijay P Parmar	B	1001	1,53,809
73	Alpesh P Tank & Nayna Alpesh Tank	B	1002	1,53,749
74	Gaurang B. Patel & Susmita B. Patel	B	1003	1,50,012
75	Varshaben P. Parikh & Raj Prashantbhai	B	1004	1,40,007
76	Satishkumar R. Patel	B	1101	1,08,185
77	Sanjeevkumar Jain & Priyanka Jain	B	1102	1,63,995
78	Ruchi N. Bhatt & Manan M. Bhatt	B	1103	1,80,810
79	Padmja N. Mehta & Narendra Mehta	B	1202	1,08,485
80	Deval Nilay Purohit & Nilay B. Purohit	B	1203	1,86,837
81	Amit Yadav & Priyanka A. Yadav	B	1204	1,02,459
82	Priti Chauhan And Jignesh Chauhan	B	1301	1,80,810
83	Vijaybhai D. Gajera & Divya V. Gajera	B	1302	1,05,051
84	Riddhi Vishal Patadia & Vishal Patadiya	B	1303	1,32,775
85	Parul Ashwin Joshi & Dhruvkumar A. Joshi	B	1304	1,08,486
86	Divyaben H. Gilder & Chandrakant R. Vala	C	101	44,841
87	Pathik C. Vala & Divyaben C. Vala	C	102	1,12,102
88	Laxmanbhai Kacharabhai Ravaliya	C	103	1,07,100
89	Neha Laxmanbhai Ravaliya	C	104	1,07,100
90	Sujith Gopal & Athira Sujith Pillai	C	201	1,44,648
91	Manoj S. Pincha & Sangita M. Pincha	C	203	1,14,870
92	Rishi V. Thacker & Binaben Thacker	C	204	1,86,234
93	Jay B. Trivedi & Bhushan H. Trivedi	C	301	1,89,851
94	Kansara Trunai Pareshbhai	C	302	1,76,610
95	Gandharv V. Thaker & Bindi G. Thaker	C	303	1,56,762

96	Pradeep Kothari	C	304	1,65,260
97	Shirly Divya Joseph	C	401	1,47,842
98	Narendra Singh & Sweta Yadav	C	402	1,02,102
99	Indumatiben R. Desai	C	403	92,400
100	Shravankumar Dharamshi Soni	C	404	92,400
101	Saroj B. Mankad & Panthini J. Shrivastav	C	501	90,720
102	Darshi Y. Patel & Nikita D. Patel	C	502	1,62,824
103	Pankaj Jayantilal Patel	C	503	71,400
104	Anishkumar Sureshbhai Amin	C	504	71,400
105	Kavachkumar H. Patel & Vidhi K. Patel	C	603	1,42,237
106	Bhumish J. Modi & Nila J. Modi	C	604	1,05,774
107	Pinal G. Patel & Sahil N. Patel	C	701	1,75,655
108	Chirag H. Chavda & Ankita C. Chavda	C	702	1,75,655
109	Varshben M. Patel & Sudhaben M. Patel	C	703	1,55,617
110	Rajnish K. Bavaria & Ameer R. Bavaria	C	704	1,57,727
111	Bina P. Kamdar	C	803	92,400
112	Bina P. Kamdar	C	804	92,400
113	Dr. Adarsh Kiran Desai	C	901	1,11,377
114	Ankit Gupta & Navneet Gill	C	902	1,36,448
115	Harshal P. Parikh & Prashant M. Parikh	C	903	1,74,783
116	Chandni D. Dave & Darshan U. Dave	C	904	1,23,252
117	Khyati Bhatt & Jagruti Bhatt	C	1001	1,26,567
118	Pareesh V. Prajapati & Hetal P. Prajapati	C	1002	1,76,610
119	Purvi Hemal Shah & Hemal Rajnikant Shah	C	1003	1,19,238
120	Manan S. Thakker & Chandni M. Thakker	C	1004	1,08,486
121	Nirali M. Kundaliya & Maulik Y. Kundaliya	C	1101	1,77,797
122	Vijayaben J. Mungara & Jamanbhai C. Mungara	C	1103	1,44,889
123	Jitu Mistry & Mistry Neetu Jitu	C	1104	1,13,308
124	Ashutosh Gokhale	C	1201	1,95,878
125	Ushaben D. Vaishnav	C	1202	1,11,258
126	Khushboo Y. Bhatia & Yashpal Umesh Bhatia	C	1203	1,53,749
127	Mithila K. Patel	C	1204	1,75,655
128	Mihirkumar Bharatbhai Shah	C	1302	1,70,022
129	Shetal Nilesh Pandit & Malhar Pandit	C	1304	1,02,459
130	Mandakini V. Upadhyay & Ketan V. Upadhyay	D	101	1,90,333
131	Mina Bharat Shah & Swati R. Shah	D	102	1,10,656
132	Kiritkumar Vala & Hemraj Vala	D	201	1,95,878
133	Honey Bafna & Ashish Bafna	D	202	1,85,330
134	Hiren P. Solanki & Rimple H. Solanki	D	203	1,86,234
135	Divyapratapsinh B. Jadeja & K. B. Jadeja	D	204	1,49,108
136	Pankaj Shah & Sharmila P. Shah	D	301	1,20,299
137	Pinki Ankur Lal & Ankur Lal	D	302	1,79,303
138	Bhavna M. Trivedi & Manish P. Trivedi	D	303	1,08,486
139	Deepesh M. Bhambhani	D	304	1,08,486
140	Santoshi A. Galphade & Amit Anant Galphade	D	401	1,80,810
141	Anand Handa & Shaweta A. Handa	D	402	1,80,810
142	Meghal T. Shah & Dharmi M. Shah	D	403	1,74,783
143	Amardas K. Gondaliya & S.D. Dudharejiya	D	404	1,80,087
144	Ajaj A. Nanavati & Anish M. Nanavati	D	501	1,44,648
145	Nirav H. Doshi & Komal N. Doshi	D	503	1,05,051
146	Keyur Rajendra Parekh	D	504	1,37,295
147	Mrugesh K. Vaghela & Pramita M. Vaghela	D	601	1,60,620

148	Surnit S.Vithalani	D	603	1,20,540
149	Piyush Ranjan	D	604	1,80,180
150	Harsha A. Rao & Alpesh Rao	D	701	1,86,234
151	Harsh G. Dave & Parth G. Dave	D	702	1,56,762
152	Shruti Chirag Patel	D	704	1,20,540
153	Abhishek Shembekar & Ankita A. Shembekar	D	801	1,86,234
154	Dhaval Trivedi & Ankita Trivedi	D	802	1,08,486
155	Shraddha M. Trivedi & Maulik H. Trivedi	D	804	1,35,849
156	Jigneshbhai Pitamberbhai Patel	D	901	1,95,878
157	Pratixa Dangar & Hardik H.Sheth	D	902	1,45,492
158	Nutan Anitkumar Garg	D	903	1,59,836
159	Parth B. Rathod & Kartik B. Rathod	D	904	1,72,432
160	Seema Neelesh Nanda & Neelesh M. Nanda	D	1002	1,95,878
161	Roopak Vinod Kapoor	D	1003	1,38,621
162	Himadri Thakar	D	1004	1,23,192
163	Kiran Shridhar Kolhe & Kshama Kolhe	D	1101	1,94,190
164	Lalitkumar Baregama & Manu Baregama	D	1102	1,74,060
165	Parul Mahesh Majithia & Naitik M. Majithia	D	1103	1,05,473
166	Shilpa A. Solanki	D	1202	1,08,486
167	Bhartiben G.Soni & Ghanshyam M. Soni	D	1203	1,95,878
168	Ilaben K.Shah & K.M.Shah & K.K.Shah	D	1204	1,27,869
169	Prashant Kadvekar & Anjal Kadvekar	D	1302	1,95,878
170	Pankaj Mangroliya & Medha Mangroliya	E	101	1,80,810
171	Arun Pancholi & Mehul A.Pancholi	E	102	92,400
172	Bhanumati M. Chauhan & Gayatri M. Chauhan	E	103	1,08,486
173	Sandipsinh K. Vaghela & Nitaba S. Vaghela	E	201	1,80,810
174	Chetan M. Parmar & Sonal C.Parmar	E	202	79,660
175	Suryavadan D. Joshi & Dipika S. Joshi	E	203	1,08,486
176	Rathod Gauravsinh & Aartiba G. Rathod	E	204	1,16,683
177	Jigar M. Bhatt & Tejal J. Bhatt	E	301	1,57,305
178	Mahendra K. Prajapati & Bhavika M. Prajapat	E	302	1,42,128
179	Vishal C. Sejpal & Jayshree V.Sejpal	E	303	1,08,486
180	Roshiny Peethambaran & H. Peeth. & V.Pee.	E	304	1,85,330
181	Siddhant Jhala	E	401	1,20,636
182	Nidhi Ashok Modi	E	402	1,04,570
183	Shanta Suryakumar Pandya	E	403	1,26,025
184	Smit M. Agrawal & Mukesh J. Agrawal	E	404	1,80,810
185	Udita Majithia & Mahesh Upendra Majithia	E	501	1,05,473
186	Dipti Jagdish Patil & Jagdish M.Patil	E	502	1,36,869
187	Jigneshbhai C. Vala & Purvi Vala	E	503	1,05,051
188	Digant Pankaj Sutaria & Rinpa D. Sutaria	E	504	1,35,005
189	Anoop Singh	E	601	1,56,823
190	Dhwani A. Parikh	E	602	1,80,810
191	Nairuti S. Barad	E	603	1,00,771
192	Rinku N. Akbari & Nareesh R. Akbari	E	701	1,08,486
193	Bhavika D. Modi & Vasentray A. Chauhan	E	702	1,17,617
194	Kantaben Dhamshaniya & Rahul L.Dhamshaniya	E	703	1,08,486
195	Prakash G. Patel	E	704	1,08,486
196	Darshan Bipinbhai Khatri	E	801	1,16,321
197	Dilip M. Shah & Sudha Shah	E	802	1,53,300
198	Sudha D. Shah & Dilip M. Shah	E	803	1,53,300
199	Bhavik J. Sheth & Bhumiika B. Sheth	E	804	1,20,299

200	Namitaben Pintubhai Doshi	E	901	1,05,051
201	Dipti Biren Soni	E	902	1,56,967
202	Krupa Ameya Khadakkar & Ameya Khadakkar	E	903	1,18,310
203	Harshadkumar P. Patel	E	904	1,08,486
204	Kalavatiben P. Parekh	E	1001	1,08,486
205	Tejas M. Gandhi & Prachi T. Gandhi	E	1002	1,08,486
206	Heena M. Agrawal & Mayur G. Agrawal	E	1003	1,79,303
207	Chauhan Bhavik & Priyanka B. Chauhan	E	1101	1,08,486
208	Hema C. Shah & Chinan Y. Shah	E	1102	1,61,945
209	Hetal K. Vadalia	E	1103	1,86,234
210	Amit A. Sanghvi & Urmilaben A. Sanghvi	E	1104	1,94,069
211	Manoharlal D. Saraf & Umadevi Saraf	E	1201	1,95,878
212	Alka H. Kamdar & Harishbhai J. Kamdar	E	1202	1,08,486
213	Pellisery Joshila Roy & Pellisery Roy Paul	E	1203	1,08,486
214	Samir S. Bhatia & Padma S. Bhatia	E	1302	1,91,659
215	Soniya K. Dave	E	1303	1,91,659
	Total			<b>2,95,93,850</b>

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