BEFORE THE NATIONAL ANTI-PROFEETRING AUTHORITY

UNDER THE CENTRAL GOODS & SERVICES TAX ACT, 2017

Case No.	70/2022
Date of Institution	27.11.2020
Date of Order	07.09.2022

In the matter of:

Director General of Anti-Profiteering, Central Board of Indirect Taxes & Customs, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.

Applicant

Versus

M/s Bhartiya Urban Pvt. Ltd. (Formerly Known as M/s. Bhartiya City Developers Pvt. Ltd.), No. 1/5, Palace Road, Bengaluru- 560 001.

Respondent

Quorum:-

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

Present:-

1. None for the Applicant.
2. Vijay Kumar R, VP Finance, Lohith B N, GM Finance, Badrinath NR, Tax Consultant for the Respondent.

ORDER

1. The present Report dated 27.11.2020 had been received from the Director-General of Anti-Profiteering (DGAP) after a detailed investigation under Rule 129 (6) of the Central Goods & Services Tax (CGST) Rules, 2017 alleging profiteering in respect of Construction Services. The brief facts of the report were that with reference to National Anti-Profiteering Authority's (hereinafter

referred to as **NAA or the Authority**) Interim Order No. 12/2019 dated 15.10.2019 in the matter of Sh. Vivek Singh vs. M/s. Bhartiya City Developers Pvt. Ltd. wherein NAA has directed DGAP under Rule 133(5) of the Central Goods and Services Tax Rules, 2017 to conduct investigation of all the other projects undertaken by the Respondent under the same registration that had not been investigated from the perspective of Section 171 of the Central Goods and Service Tax Act, 2017. Accordingly, the Present case has been investigated and report was filed on 27.11.2020.

2. The DGAP in its report dated 27.11.2020, inter-alia, has stated that:-

i. A letter was issued to the Respondent on 25.10.2019 calling upon him to submit the details of other projects under the GST registration No. 29AAACZ3571A1ZF. In response, the Respondent had submitted vide letter dated 07.11.2019 that he had following projects under the same GSTIN:

Table-'A'

S. No.	Name of the Project / Phase	Type of the Project
1	Nikoo Homes - I	Residential
2	Nikoo Homes – II	Residential
3	Leela Residences	Residential

On perusal of the above table, it had been observed that the DGAP had already furnished it's Investigation Report in case of the project "Nikoo Homes-I" vide report dated 30.09.2020 and in case of the project "Nikoo Homes-II" this Authority had already passed Final Order No. 49/2019 dated 14.10.2019 and the Respondent had filed Writ Petition (Civil) No. 12717/2019 against the Order No. 49/2019 of the Authority in case of Nikoo Homes-II before the Hon'ble High Court of Delhi and the Hon'ble Court vide its Order dated 04.12.2019 had directed a following:

"Subject to the Petitioner depositing the amount of Rs. 5,06,78,069/- with the Respondents within four weeks, the impugned order shall remain stayed. However, the penalty proceedings might continue subject to further orders in the

petition. The amount, if deposited, shall be put in a fixed deposit for a period of one year. The disbursement of the amount deposited shall abide by any further orders that might be passed in the petition."

The Respondent deposited the amount of Rs. 5,06,78,069/- vide DD no. 039668 dated 31.12.2019 with the DGAP which was accordingly converted into Fixed Deposit. Therefore in order to collect evidence necessary to determine whether the benefit of ITC had been passed on by the Respondent to the recipients/buyers in respect of the Construction Service supplied by the Respondent in the project "Leela Residences" a Notice under Rule 129 of the Rules was issued by the Director General of Anti-profiteering on 18.11.2019 calling upon the Respondent to reply as to whether he admitted that the benefit of ITC had not been passed on to the Recipients by way of commensurate reduction in prices and if so, to suo moto determine the quantum thereof and indicate the same in his reply to the Notice as well as furnish all documents in support of his reply.

ii. The DGAP mentioned that the period covered by the current investigation is from 01.07.2017 to 31.10.2019.

iii. The statutory time limit to complete the investigation was 15.04.2020 which was extended up to 30.11.2020 by virtue of Notification No. 35/2020- Central Tax dated 03.04.2020, Notification No. 55/2020-Central Tax dated 27.06.2020 and Notification No. 65/2020-Central Tax dated 01.09.2020 issued by Central Government under Section 168A of the CGST Act, 2017 where it was provided that "any time limit for completion or compliance of any action, by any authority, had been specified in, or prescribed or notified under section 171 of the said Act, which falls during the period from the 20th day of March, 2020 to the 29th day of November, 2020, 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 up to the 30th day of November, 2020."

iv. In response to the Notice dated 18.11.2019 and subsequent reminders, the Respondent Submitted his reply vide letters/e-mails dated 25.11.2019, 19.12.2019, 21.01.2020, 08.06.2020, 02.07.2020, 10.08.2020, 25.10.2020, 13.11.2020 and 19.11.2020. The reply of the Respondent was summed up as follows.

(a) The following projects are under the same GSTIN:

S. No.	Name of the Project / Phase	Type of the Project
1.	Nikoo Homes - I	Residential
2.	Nikoo Homes – II	Residential
3.	Leela Residences	Residential

The Authority had already issued its Order No. 49/2019 dated 14.10.2019 in case of Nikoo Homes-II. For the projects "Nikoo Homes-I" and "Leela Residences", the Respondent had raised objection that while Rule 133 (4) of the Rules empowered calling for information and causing for further investigation in respect of goods/services in question (covered in the report of DGAP, viz., Nikoo Homes-I), the provisions of Rule 133 (5) of the Rules provided for similar powers in respect of any other goods or services which were not covered in the report.

(b) The time limit of six months from the date of receipt of DGAP's report dated 14.03.2019 had already expired in this case as per GST Rule 133(1). As per Authority's Order No. 12/2019, it had considered the date of institution as 12.04.2019 and even if it considers the same date as DGAP report date, the six month' time limit prescribed under Rule 133(1) of the Rules had already been expired. It was important to note that while there was no restriction of time to call for information under Rule 133(4), the provisions of Rule 133(1) places an embargo of 6 months from the date of the DGAP Report within

which the information/details should be called for. In the instant case, the time lapse from the date of report of DGAP (07.03.2019) to the date of letter calling for additional information under Rule 133(5) (25.10.2019) was more than 6 months (even NAA's order dated 15.10.2019). Accordingly, it was submitted that calling information under Rule 133 was time barred in the instant case and requested to drop the proceedings proposed to be initiated by this office.

(c) The Respondent had following projects which were non-residential in nature and not for sale as on date for which he had not claimed any ITC on procurement of materials/services:

i. Leela Hotel & Convention Centre;
ii. Retail Mall & Cineplex;
iii. School Project.

(d) Vide its ruling the Gujarat High Court in the case of Sapphire Foods India Pvt. Ltd., a franchisee of Yum Brand, operating KFC & Pizza Hut. The Hon'ble HC had granted an interim relief and had directed the Authority & DGAP not to cause investigation for products other than the products in respect of which a complaint had been made. The petitioner had challenged the scope of enlarging the investigation to products other than the ones in respect of which a complaint was filed on the premise that such an investigation would be illegal, specifically when the complaint was for a specific product. The main argument advanced by the Petitioner pertained to illegal expansion of scope of product under investigation. Petitioner argued that when the complaint was for a specific product, the investigation should also be accordingly. Referring to order of Delhi High Court in Reckitt Benckiser [TS-1162-HC-2019(DEL)-NT] it was submitted that expansion of investigation sans any legal powers would be incorrect and

illegal. Therefore, Respondent requested to consider his objections at investigation stage itself and sought this office's comments on the same.

(e) With effect from 1st July 2017, The Respondent had sold 36 flats in "Leela Residences" project to various customers for all- inclusive prices, after considering the market conditions, escalations, demand-supply balance, GST benefit / concession, development in the locality, location of the land, proximity to educational institutions/ hospitals/ airport etc. It's agreed between the Respondent and the Buyers that the Buyers would not claim any GST ITC benefit as per Clause 6.4 of the Agreement to Sell which was reproduced herein below for easy reference:

"The Purchaser hereby agrees that the consideration agreed herein was based on the mutual negotiations between the Purchaser and the Seller as on the date of the application for allotment. It was made clear that after considering the above fact, the Purchasers shall have no right to claim any input benefits of sellers or reduction in cost due to changes in GST or renegotiate on the considerations in comparison with the other purchasers and/or for whatsoever reasons."

The Respondent had further stated that vide para-49 of Order No. 49/2019 dated 15.10.2019 in the matter of Respondent itself, the Authority confirmed the DGAP's finding that the Units sold post 01.07.2017 at the prices mutually agreed upon as per clause 6.4 of the Agreement to Sell executed between the buyers and the Respondent which specifically provided that the buyers would not claim ITC benefit and therefore ITC pertaining to such units was outside the scope of this investigation as the selling prices of these units were negotiated between the home buyers and the Respondent taking into consideration the benefit of ITC.

Therefore, post GST sale of flats to these customers in the present case was outside the scope of the investigation. Hence the Respondent had requested not to consider these customers for the purpose of any Anti-profiteering computation.

v. Vide the aforementioned letters and e-mails, the Respondent submitted the following documents/information:

a) Copies of GSTR-1 returns for the period July, 2017 to Oct., 2019.
b) Copies of GSTR-3B returns for the period July, 2017 to Oct., 2019.
c) List of home buyers for the project "Leela Residences".
d) CENVAT/Input Tax Credit register for the period April, 2016 to Oct., 2019
e) Copies of all Demand Letters and Sale Agreement/Contract issued to one of the home buyers.
f) Details of unsold flats as on 31.10.2019.
g) Copies of sample agreement to sell entered with customers to whom units sold post-GST.

vi. The Respondent also submitted that all the details/ information submitted by him were to be treated as confidential in terms of Rule 130 of the Rules.

vii. The Interim Order received from the National Anti-Profiteering Authority, the various replies of the Respondent and the documents/evidences on record had been carefully examined in respect of the project "Leela Residences". The main issues for determination are:

(i) Whether there was benefit of reduction in the rate of tax or ITC on the supply of construction service by the Respondent, on implementation of GST w.e.f. 01.07.2017 and if so,
(ii) Whether such benefit was passed on by the Respondent to the recipients, in terms of Section 171 of the CGST

Act, 2017.

viii. The Respondent had 3 residential projects i.e. Nikoo Homes-I, Nikoo Homes-II and Leela Residences. Leela Residences was covered in the present report whereas the other two projects i.e. Nikoo Homes-I & Nikoo Homes-II had already been investigated.

ix. Respondent's objection with respect to calling information/documents after expiry of 6 months as mentioned in Rule 133(1) was forwarded by the DGAP to the Authority vide letter dated 19.11.2019 seeking its guidance for further course of action in the instant case. In response, the Authority vide letter dated 02.12.2019 informed that all such submissions of the Respondent would be addressed by the Authority in its final Order and the DGAP was directed to proceed with the investigation.

x. Another relevant point in this regard was para 5 of Schedule-III of the CGST Act, 2017 (Activities or Transactions which shall be treated neither as a supply of goods nor a supply of services) which reads as "Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building". Further, clause (b) of Paragraph 5 of Schedule II of the CGST Act, 2017 reads as"(b) construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration had been received after issuance of Completion Certificate, where required, by the competent authority or after its first occupation, whichever was earlier". Thus, the ITC pertaining to the residential units and commercial shops 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 exempt 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 exempt supply under sub-section (2) shall be such as might be prescribed and shall include supplies on which the recipient was liable to pay tax on reverse charge basis, transactions in securities, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building".

Therefore, the ITC pertaining to the unsold units might not fall within the ambit of this investigation and the Respondent was required to recalibrate the selling price of such units to be sold to the prospective buyers by considering the net benefit of additional ITC available to him post-GST.

xi. The DGAP also argued that as regards the allegation of profiteering, it was observed that prior to 01.07.2017, i.e., before the GST was introduced, the Respondent were eligible to avail CENVAT credit of Service Tax paid on services and the credit of the VAT paid on the purchase of inputs and deduction of the payments made to the sub-contractors from the VAT turnover. However, CENVAT credit of the Central Excise duty paid on inputs was not admissible as per the CENVAT Credit Rules, 2004, which was in force at the material time. 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 October, 2019, the details of the ITCs availed by him, his turnover from the project "Leela Residences", the ratios of ITCs to turnovers, during the pre-GST (April, 2016 to June, 2017) and post-GST (July, 2017 to

October, 2019) periods, were furnished in table-'B' below.

Table B (Amount in Rs.)

S. No.	Particulars	April, 2016 to June, 2017 (Pre-GST)	July, 2017 to October, 2019 (Post-GST)
(1)	(2)	(3)	(4)
1	CENVAT of Service Tax Paid on Input Services (A)	1,48,69,371	-
2	Credit of VAT Paid on Purchase of Inputs (B)	56,63,360	-
3	Rebate of VAT(WCT) for the payment made to registered Contractors or Sub-contractors (C)	1,02,04,304	-
4	Input Tax Credit of GST Availed (D)	-	9,95,24,529
5	Total CENVAT/VAT/Input Tax Credit Availed (E) [(A)+(B)+(C)] or [(D)]	3,07,37,035	9,95,24,529
6	Total Turnover including land value as per List of Home Buyers (Flats sold upto 31.10.2019) (F)	30,32,42,814	1,17,54,37,381
7	Total Saleable Area (in sq. ft.) (G)	3,76,602	3,76,602
8	Area Sold relevant to Turnover as per List of Homebuyers (Flats sold upto 31.10.2019) (H)	1,24,892	1,89,937
9	Relevant CENVAT/INPUT TAX CREDIT (I) [(E)*(H)/(G)]	1,01,93,280	5,01,94,610
10	Ratio of CENVAT/ ITC to Turnover [(J) (I)/(F)]	3.36%	4.27%

xii. From the above analysis the DGAP had concluded 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 3.36% whereas during the post- GST period (July, 2017 to October, 2019), the percentage was 4.27%. Thus, the Respondent had benefited from additional ITC to the tune of 0.91% [4.27% (-) 3.36%] of the turnover post-GST. Accordingly, the profiteering had been examined by comparing the applicable tax rate and ITC available in the pre-GST period (April, 2016 to June, 2017) when Service Tax @ 6% and VAT@ 10.15% were payable (total tax rate of 16.15% on the construction value) with the post- GST period (July, 2017 to September, 2019) when the GST rate was 18% on the construction value, vide Notification No.11/2017-Central Tax (Rate), dated 28.06.2017 .Accordingly, on the basis of the figures contained in table-'B' above, the comparative figures of the ratio of ITC availed/available to the turnover in the pre-GST and post-GST periods as well as the turnover, the recalibrated

base price and the excess realization (profiteering) during the post-GST period, was tabulated in table- 'C' as below.

Table-'C' (Amount in Rs.)

S. No.	Particulars		Post- GST
1	Period	A	July,2017 to October, 2019
2	Output tax rate on Construction Service (%)	B	18.00
3	Ratio of CENVAT/ ITC to Total Turnover asper Table - B above (%)	C	4.27
4	Increase in ITC availed post-GST (%)	D 4.27% *less* 3.36%	0.91%
5	Analysis of Increase in input tax credit:		
6	Total Base Price excluding land value raised during July, 2017 to October, 2019	E	81,83,81,627/-
7	Less: Base Price raised during July, 2017 to October, 2019 (Flats sold after 01.07.2017 as per new agreement)	F	35,18,92,700/-
8	Base Price raised during July, 2017 to October, 2019 (Flatssold upto 30.06.2017)	G E-F	46,64,88,927/-
9	GST raised @ 18% over Base Price	H G*18%	8,39,68,007/-
10	Total Demand raised	I G+H	55,04,56,934/-
11	Recalibrated Base Price	J G*(1-D) or 99.09% of G	46,22,43,878/-
12	GST @18%	K J*18%	8,32,03,898/-
13	Commensurate demand price	L J+K	54,54,47,776/-
14	Excess Collection of Demand or Profiteering Amount	M I - L	50,09,158/-

xiii. The DGAP has concluded from the above Table-'C' that the additional ITC of 0.91% of the taxable turnover should had resulted in the commensurate reduction in the base price as well as cum-tax price. Therefore, in terms of Section 171 of the CGST Act, 2017, the benefit of such additional ITC was required to be passed on by the Respondent to the respective recipients.

xiv. The DGAP observed from the above calculation and analysis that on the basis of the aforesaid CENVAT/Input Tax Credit availability in the pre and post-GST periods and the details of the amount raised/collected by the Respondent from the home

buyers during the period 01.07.2017 to 31.10.2019, the Respondent had benefited by an additional amount of input tax credit, by an amount of Rs. 50,09,158/- which included GST @18% on the base amount of Rs. 42,45,049/-. The buyers and unit no. wise break-up of this amount was given in Annex-23 of the report.

xv. On the basis of the details of outward supplies of the Construction Services submitted by the Respondent, it was observed that the said service had been supplied in the State of Karnataka only.

xvi. The DGAP concluded that it was pertinent to mention here that above computation of profiteering was with respect to 85 home buyers from whom construction value had been received by the Respondent during the period 01.07.2017 to 31.10.2019 (excluding the flats sold post 01.07.2017). Whereas the Respondent had booked 121 flats till 31.10.2019, and claimed that effective from 01.07.2017, he had sold 36 flats at the rates agreed by the customers as all-inclusive price after considering market conditions, escalations, demand-supply balance, GST benefit / concession, development in the locality, location of the land, proximity to educational institutions/hospitals/airport etc. and the price so fixed was mutually negotiated & agreed upon. Clause 6.4 of the Agreement to Sell also confirms the same which reads as *"The Purchaser hereby agrees that the consideration agreed herein was based on the mutual negotiations between the Purchaser and the Seller as on the date of the application for allotment. It was made clear that after considering the above fact, the Purchasers shall have no right to claim any input benefits of sellers or reduction in cost due to changes in GST or renegotiate on the considerations in comparison with the other purchasers and/or for whatsoever reasons."*

This argument of the Respondent had merit and therefore, ITC pertaining to the above 36 units was outside the scope of this

investigation as the selling price of such units was negotiated between the home buyers and the Respondent taking into consideration the benefit of ITC or change in GST.

xvii. The benefit of additional ITC to the tune of 0.91% of the turnover, accrued to the Respondent post-GST and the same was required to be passed on by the Respondent to the Recipients who had entered into the agreements with the Respondent upto 30.06.2017. On this account, the Respondent had realized an additional amount to the tune of Rs. 50,09,158/- from 85 other recipients who was not Applicants in the present proceedings. 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, this additional amount of Rs. 50,09,158/- was required to be returned to such eligible Recipients. As observed earlier, the Respondent had supplied construction services in the State of Karnataka only.

xviii. The present investigation covers the period from 01.07.2017 to 31.10.2019. Profiteering, if any, for the period post October, 2019, had not been examined as the exact quantum of ITC that would be available to the Respondent in future cannot be determined at this stage, when the Respondent was continuing to avail ITC in respect of the present project.

xix. Section 171(1) of the CGST Act, 2017, requiring that "a 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 "M/s. Bhartiya Urban Pvt. Ltd. (Formerly known as Bhartiya City Developers Pvt. Ltd.) amounting to Rs. 50,09,158/- in the present case.

3. After perusal of the DGAP's report, this Authority in its sitting held on 01.12.2020 directed the Applicant and the Respondent to submit consolidated reply/written submissions by 17.12.2020. A Notice dated 03.12.2020 was also issued to the Respondent to explain why

the Report dated 27.11.2020 furnished by the DGAP should not be accepted and his liability for profiteering in violation of the provisions of Section 171 should not be determined u/s 171 of the CGST Act, 2017. During the course of the proceedings, the Respondent has filed his written submissions dated 11.01.2021, wherein he has stated that :

(i) The proceedings were time barred as there was delay in initiation of the same. Detailed submissions were made in this regard as part of the submission of details to the office of the DGAP. The Respondent further stated that he was given to understand that the same would be considered as part of the final Order. The Respondent also requested for an opportunity of being heard after he had obtained the comments from NAA. The Respondent has further referred the summary of his submissions made to the DGAP was furnished as Annexure I. As per the Annexure I Anti-Profiteering Proceedings for the project "Leela Residences" were initiated under Rule 133(5) of the CGST Rules, 2017. The Respondent has referred to the extract of the said Rules for easy and quick reference:

Rule 133 of CGST Rules Order of the Authority

(1.) The Authority shall, within a period of six months from the date of the receipt of the report from the Director General of Anti-profiteering determine whether a registered person has passed on the benefit of the reduction in the rate of tax on the supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices.

(4). If the report of the Director General of Anti-profiteering referred to in sub-rule (6) of rule 129 recommends that there is contravention or even non-contravention of the provisions of section 171 or these rules, but the Authority is of the opinion that further investigation or inquiry is called for in the matter, it may, for reasons to be recorded in writing, refer the matter to the Director

General of Anti-profiteering to cause further investigation or inquiry in accordance with the provisions of the Act and these rules."

5.(a) Notwithstanding anything contained in sub-rule (4), where upon receipt of the report of the Director General of Anti-profiteering referred to in sub-rule (6) of rule 129, the Authority has reasons to believe that there has been contravention of the provisions of section 171 in respect of Goods or Services or both other than those covered in the said report, it may, for reasons to be recorded in writing, within the time limit specified in sub-rule (1), direct the Director General of Anti-profiteering to cause investigation or inquiry with regard to such other goods or services or both, in accordance with the provisions of the Act and these rules."

(ii) From the reading of the above rule, it was prudent to note that the calling of information for *"Leela Residences"* through the report of *"Nikoo I"* would be subject to a time limit of 6 months from the date of the DGAP's report for Nikoo I, as per the detailed given below:

S.No.	Name of the Project/Phase	Particulars	Date
1	Nikoo-I- Residential	Anti-Profiteering Report by DGAP	07.03.2019
2	Due Date for Rule 133 (5)	Expiry of the six months from 07.03.2019	06.09.2019
3	Leela Residences	Notice requisitioning documents for conducting Anti-Profiteering study based on Nikoo –I DGAP report	18.11.2019

(iii) Tax paid on services was not a benefit when compared to the pre-GST regime, by any stretch of imagination. The report of the DGAP was oblivious to this basic and important fact. Service Tax 15% was paid up to 30.06.2017 and the GST

paid was @ 18% thereafter on services. In both the circumstances, the cost of the service remains the same to the Respondent. It therefore goes without saying that a mere increase of the tax from 15% to 18% was not a benefit. The Respondent further explained that though the same need no elaboration for the sake of easy reference as he was paying 15% as Service tax and claiming the full amount as input credits and under the GST regime, he paid 18% and claimed the entire amount as credit. Hence, there was no increase, whether factual or fictional in the same. A mere Increase in the rate of tax which was eligible as credit wholly under both the laws, in his view, was not covered under Section 171 of CGST Act, 2017. The Respondent also stated that as a works contractor he was eligible to claim full Credit of Services Tax @ 15 % paid on all Input Services before the GST regime and so also GST @ 18% on all Input Services was eligible to be claimed as credit. The Change was essentially in the Rate of Tax which had increase from 15% to 18%. As a Recipient of such Services he was paying 15% to the Service Providers or under Reverse Charge Mechanism as applicable and claiming full credit of such 15%. With the implementation of GST, tax was paid to the Service Provider or under Reverse Charge Mechanism@ 18% which was fully claimed as credit. The fact that full tax, whether Service Tax or GST was allowed as input credit, meant that there is no real and additional benefit that accrues on 'services' due to implementation of GST. Further, the Respondent also submitted that the methodology adopted by the office of the DGAP at a higher level compares the total amount of input credit claimed during the pre-GST regime with the GST regime. The mere fact that 15% was enhanced to 18% on services would mean additional credit when compared in absolute rupee terms. However, as explained supra, the additional 3% is paid by the Respondent, either to the service provider or under reverse charge mechanism and the very same amount which was paid was then claimed as

input credit. Thus, the Respondent reiterated that there was no additional benefit that accrues due to implementation of GST.

(iv) That computation for the purposes of anti-profiteering should be based on the estimated cost of the project at the time it was launched and the amount of taxes thereon which were reckoned as project cost but not the sales realizations or the input credits actually claimed during the GST period. In this regard, he wished to submit that the comparison of output tax and input tax as a ratio to the turnover and within themselves would be an acceptable analysis for businesses which were season agnostic and where the sale and purchase commence and conclude within a very short duration. e.g. consumer durables, food items etc., which were sold off-the-shelf and that could not be applied where the business was seasonal; it was imperative that in such cases, the ratios would be heavily and highly skewed when applied for the season or off-season only. The Respondent further explained that in the business involving construction and sale of residential flats, the total turnover, taxable turnover and output tax liability was a function of sale of new units out of the total inventory in the project, and that, on the contrary, the inward supplies and the input taxes is a function of work completion and speed in project execution. The two did not have any correlation. The provisions relating to anti-profiteering clearly mandate that any 'additional input credit' that has arisen due to GST (when compared to the previous laws) should be passed on to the customers by way of a commensurate reduction in the price of the goods or services being supplied. On the basis of the above the pricing would be lower at the beginning of the project when compared to the pricing as it approached completion and the 'cost to be incurred' on the project and the taxes that were originally envisaged as a project cost should be considered as the basis for computing the alleged profiteering amount

instead of the realizations from the customers. A comparison of the taxes that were originally envisaged as part of the project cost which were then subsumed into GST and therefore eligible as credit was the only additional credit that was available for the project. In his view, this was the amount that represented 'additional input credit' for the purposes of S. 171 of the CGST Act, 2017.

(v) That the amounts realized or installments received from the customers were a mix of (a) towards construction (ii) towards UDI in land (iii) towards common amenities and registrations. Thus, using the amounts realized and applying the same as a ratio to the credits actually claimed is a biased and unscientific, as an approach. He further explained that a contract for sale of residential unit consisted of two major components, viz., sale of UDI in land and sale of constructed portion. While sale of UDI in land was a sale of immovable property and the sale of constructed portion was liable to Service Tax and VAT during the pre-GST regime and to GST under the GST regime. Thus, from an accounting and legal perspective, the receipt of money from the customers towards the installments and its allocation against land or constructed portion would play a significant role in determining the quantum of taxable turnover and tax thereon. He wished to submit that the amounts / installments received from the customers were first allocated towards the value of land and upon exhaustion of the land value; the subsequent installments were allocated towards the construction agreement. Thus, it was only at the stage when the amounts were allocated towards the construction agreement, that the taxable turnover raised in so far as it was related to the erstwhile Service Tax and VAT and then, GST. Further, irrespective of these turnovers and allocations, cost continued to be incurred on the project, thus leading to claim and accumulation of input credits. Given this startling difference, it is followed that the if these two

elements were applied as a ratio for any period thereto, would lead to wholly incorrect and absurd results and inferences – thus, making the approach and computation of the DGAP, in its report was incorrect.

(vi) The computation of 'turnovers' by the DGAP in different tables was varying and inconsistent for the reason that in Table G of the DGAP's report, the turnover included the value of land, but the same was exclusive of land in Table H. It appears to be a deliberate attempt to (i) arrive at a positive percentage difference in Table G and computation of the alleged profiteered amount in Table H of the report.

(vii) It must be borne in mind that 'land' was not a taxable element, neither under Service Tax nor under GST and as such, without prejudice to any other comments in this reply and assuming but not admitting, that the methodology adopted by the DGAP was appropriate, it was also submitted that the value of land should be excluded even in Table G of the report. Given that 'land' is not a taxable element / component in the entire scheme, the same should also not be included for the limited purposes of S. 171.

(viii) That pricing for sale of residential units was market driven. However, the methodology adopted by the DGAP in arriving at the alleged profiteered amount was based on the input credits which had been claimed by the Respondent during the said period, which was irrelevant and non-contextual in the pricing. The sale price of the flats would be determined based on different parameters like surrounding developments, standard of life of that area, facilities such as hospitals, schools, public transport and accessibility to various offices, access to airport and railway station, pricing of competition etc. The mix of demand of number of homes and the supply play a vital and significant role in the pricing irrespective of the costs. As a business practice in real estate industry, the developer always aims to achieve an overall

betterment in prices of flats which would be sold over a period of 4 to 5 years from the date of launch of the project and in certain cases, even after obtaining the occupation certificate. As such, the customers who purchase flats initially will naturally have a price advantage over the other customer who purchased flats during a later point in time, irrespective of GST. The Respondent further submitted that the cost of constructing a flat or putting up the project was wholly irrelevant in the pricing mechanism. The Respondent also stated that cost has no role to play in the pricing mechanism, it was his submission that the provisions relating to anti-profiteering, more specifically on the availability of credits should not be applicable or applied to the developer community, hence (i) the provisions of S. 171 and then (ii) to the input credits actually claimed, was a biased and incorrect application of S. 171.

(ix) The applicability of the provisions of Section 171 of the Central Goods and Services Tax Act, 2017 itself in the instant case needs a thorough reconsideration and then, for the reasons stated supra, it should essentially be applied, considered and determined for a project as a whole and not for a specific period in isolation as considered in the report of the DGAP. When applied for a period in isolation, the following are given a go-by and thus make the entire exercise, futile and incorrect.

(x) Input credits and the amounts realized from the customers had no correlation. Therefore, applying the same as a ratio would be meaningless. Input credits were based on costs incurred by the Company irrespective of whether or not, any sale or proportion of sale of units out of the total units, that was made the amounts realized were only with respect to the units sold and it must be appreciated that this amount as a comparison of the same with input credits remained skewed out of the total input credits claimed during the period in the approach adopted by the NAA, it was critical to note that it

was not final – credits to the extent they related to units that remain unsold on the date of OC would have to be reversed.

(xi) That the DGAP's report Para 19 on page no. 14 – 'Profiteering, if any, for the period post October 2019, has not been examined as the exact quantum of input tax credit that will be available to the Respondent in future cannot be determined at this stage....' This observation of the DGAP also confirmed that the methodology adopted by the DGAP itself was flawed and skewed. The provisions of S. 171, in our humble submission required the 'determination of the profiteered amount for a supply'. It was not incorrect to assume that the same should be undertaken (i) once for any transaction, and (ii) after the completion of the supply. The fact that even the DGAP said that the Respondent was continuing to avail the ITC for the project makes the whole computation unscientific and based on incomplete data, the project spans over 4 to 5 years from the date of the launch. Thus, the comparison of the input credits with output taxes should necessarily and mandatorily be undertaken (i) qua project and (ii) covering the entire life span. Comparing of the output taxes with input credit for a part of the period or for the company as a whole would lead to incorrect understanding and analysis.

(xii) That the applicability of the provisions of Section 171 of the Central Goods and Services Tax Act, 2017 in the instant case needed a thorough reconsideration and should essentially be analyzed for a project as a whole and not for a specific period in isolation, using ratio or extrapolation techniques, as considered in the report of the DGAP. This, in their submission distorts the computation and the analysis thereto.

4. The above submissions of the Respondent were supplied to the DGAP for filing his clarifications under Rule 133 (2A) of the CGST Rules, 2017. Accordingly, the DGAP has filed his clarifications

dated 08.02.2021 which have been detailed below:-

i. In response to the contention of the Respondent that direction given u/r 133(5) was time barred the DGAP has stated that the objection raised by the Respondent has been redressed in para-10 of his office's Report dated 27.11.2020 which is reproduced below:

"10. The Noticee's objection with respect to calling information/ documents after expiry of 6 months as mentioned in Rule 133(1) was forwarded by this office to the National Anti-profiteering Authority vide letter dated 19.11.2019 ***(Annex-20)*** *seeking their guidance for further course of action in the instant case. In response, the Authority vide letter dated 02.12.2019* ***(Annex-21)*** *informed that all such submissions of the Noticee will be addressed by the Authority in its final Order and this office is directed to proceed with the investigation."*

ii. In response to the contention of the Respondent that methodology adopted by DGAP was biased and unscientific, the DGAP submitted that the methodology adopted by his office was correct and strictly as per law enshrined in Section 171 of the CGST Act. The methodology had been consistently adopted by his office and upheld by NAA in all similar cases including the Order No. 49/2019 dated 14.10.2019 passed in case of project "Nikoo Homes-II" of the Respondent itself. In order to quantify the benefit of input tax credit, it was necessary to quantify the credits available to the Respondent in the pre-GST regime and also the credits available in the GST regime.

Further, the amount of the additional benefit of ITC required to be passed on, was the amount paid by the customers or flat buyers to the Respondent in the form of GST charged from them which was to be deposited by the Respondent in the Government exchequer. But the Respondent instead of paying this GST amount in cash to the Government exchequer utilized the additional ITC available to him in post GST

regime which was earlier not available in the pre-GST period. Therefore, Respondent was not required to pay anything from his own coffer to pass on the benefit of additional ITC accrued to him in GST period. Hence, the methodology adopted by the DGAP was correct and justiciable. Further in the report dated 27.11.2020, the increase in input tax credit as a percentage of total taxable turnover availed by the Respondent post-GST had been quantified. The input or input service wise availability or non-availability of input tax credit prior and post implementation of GST had not been examined. Further there should be no extra liability on the Respondent on account of increase in rate in GST compared to Service Tax as the supplier of input services were then also enjoying input tax credit on all the purchases made by them resulting in reduction in prices of the materials purchased by them which should pass on to the Respondent.

In the erstwhile pre-GST regime, various taxes and Cess were being levied by the Central Government and the State Governments, which got subsumed in the GST. Out of these taxes, the input tax credit (ITC) of some taxes was not being allowed in the erstwhile tax regime. For example, the input tax credit of Central Sales Tax, which was being collected and appropriated by the States, was not admissible. Similarly, in case of construction service, while the input tax credit of Service Tax was available, the input tax credit 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, got embedded in the cost of the goods or services supplied, resulting in increased price. With the introduction of GST with effect from 01.07.2017, all these taxes got subsumed in the GST and the input tax credit of GST became available in respect of all goods and services, unless specifically denied. This additional benefit of input tax credit in the GST 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 GST Act, 2017.

Similarly, with regard to Respondent's claim of considering estimated cost of the project, it was submitted that the Respondent was not eligible to avail the CENVAT/ITC of many taxes like Central Excise Duty on Inputs, Central Sales Tax, Karnataka Entry Tax, Countervailing Duty and Special Additional Duty of Customs etc. during the pre-GST regime and after introduction of the GST, the Respondent was eligible to avail the ITC paid on all inputs and input services including the Sub-contracts. Further, estimated cost approach was based on assumed figures which could not be verified. Section 171 of the CGST Act, 2017 casts an obligation on the suppliers to pass on the benefit of reduction in rate of tax or the benefit of ITC to the recipients by way of commensurate reduction in prices, therefore the approach & methodology adopted by his office was in consonance with the provisions of Section 171 of the Act.

iii. In response to the contention of the Respondent that Provisions of Section 171 of CGST Act, 2017 be applied for the project as a whole and not for a specified period the DGAP replied that the reply was furnished in succeeding paras.

iv. In response to the contention of the Respondent that the input credit and the amounts realized from the customers have no correlation, therefore, applying the same ratio would be meaningless the DGAP replied that there was direct correlation between the turnover and the ITC as the Respondent was discharging his GST output liability out of the ITC available to him on the basis of the turnover i.e. the cost realised by him from the buyers. Moreover, the benefit was to be passed on the additional ITC proportionate to the payment made by a buyer and hence the above ratios were relevant. Therefore, the above claim of the Respondent could not be accepted.

It is also stated in para-11 of the DGAP's Report dated 27.11.2020 that "the input tax credit pertaining to the unsold

units may not fall within the ambit of this investigation and the Respondent was required to recalibrate the selling price of such units to be sold to the prospective buyers by considering the net benefit of additional input tax credit available to him post-GST" This was as per the relevant GST Act and relevant Rules. Therefore, the proportionate credit of GST on expenses incurred attributable to such unsold units was outside the scope of impugned investigation. It was also apparent from the Report of DGAP that DGAP has computed the benefit of ITC on the area sold and the turnover received on such area. DGAP had neither computed the benefit on the unsold area nor the Respondent was being asked to pass on the benefit on the unsold area and hence, the ITC relevant to this area would remain intact with the Respondent which he could reverse at the time of receipt of Occupancy Certificate. Hence the above contention of the Respondent was incorrect.

v. In response to the contention of the Respondent that Comparison of the input credits with output taxes should be taken qua project covering the entire life span the DGAP submitted that the contention made in these paras may be correct as Section 171(1) of Central Goods and Services Tax Act, 2017 mandates passing on of the benefit of additional ITC which had accrued to the Respondent during the entire life of the project before occupancy certificate is issued. However, the Respondent availed Input Tax Credit every month by filing GSTR-3B returns inspite of a long gestation period in a housing project. The Respondent could not enrich himself at the expense of the flat buyers by denying them the benefit of ITC till completion of the project while he used the same in his business for discharging his output tax liability every month. Therefore, the Respondent had to make periodical assessment of the ITC benefit and pass it on to the eligible flat buyers on each and every demand raised by him. The Respondent could always make adjustments in case more or less benefit was passed on at the final computation and

payment of the benefit. Therefore, this condition of the Respondent could not be accepted.

5. The above clarifications of the DGAP were supplied to the Respondent for filing re-joinder vide Order dated 10.02.2021. Accordingly, the Respondent has filed a rejoinder dated 26.02.2021. The Respondent has re-iterated his previous submissions made vide letter dated 11.01.2021 w.r.t. the applicability of the provision of the Section 171 of the Central Goods and Services Tax Act, 2017 and the methodology adopted by the DGAP and the analysis thereto and requested to be heard in person before the case is finalised.

6. The proceedings in the matter could not be completed by the Authority due to lack of required quorum of members in the Authority during the period 29.04.2021 till 23.02.2022, and that the minimum quorum was restored only w.e.f. 23.02.2022 and hence the matter was taken up for conducting proceedings vide Order dated 23.02.2022 and hearing in the matter through Video Conferencing was scheduled to be held on 15.03.2022. However, the Respondent vide his email dated 15.03.2022 requested for adjournment.

7. Further, the Next hearing in the case was granted to the Respondent on 25.03.2022. Hearing dated 25.03.2022 was attended by Shri Vijay Kumar R, V.P. Finance, Lohith B. N., GM Finance, Badrinath N. R., Tax Consultant for the Respondent. During the personal hearing the Respondent has re-iterated his arguments based on his written submissions dated 11.01.2021 and 26.02.2021.

8. We have carefully considered the Reports filed by the DGAP, all the submissions and the documents placed on record, and the arguments advanced by the Respondent and observed 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 3.36%, whereas, during the post-GST period (July-2017 to October-2019), it was 4.27%. This confirms that in the post-GST period, the Respondent has been benefited from additional ITC to the tune of 0.91% (4.27%-3.36%) of his turnover and the same is required to be passed on by him to the eligible flat buyers. We observe that the

computation of the amount of ITC benefit to be passed on by the Respondent to the eligible flat buyers works out to Rs.50,09,158/- which included GST @18% on the base amount of Rs. 42,45,049/-.

9. The Respondent has filed his first written submissions on 11.01.2021 vide which he had submitted that the proceedings were time barred as the Respondent observed that the time limit of 6 months from the date of receipt of DGAP's report dated 14.03.2019 has already expired in that case as per the provision of Rule 133(4) of the Central Goods and Services Tax Rules, 2017. As per the NAA's Order No. 12/2019, the Authority has considered the date of institution as 12.04.2019 and even if that date is considered as DGAP's report date, the 6 month time limit prescribed under Rule 133(1) of CGST Rules, 2017 had already expired. Further, the Respondent has also stated that, the time lapse from the date of report of the DGAP i.e. 07.03.2019 to the date of the letter calling for additional information under Rule 133(5) is more than 6 months. Hence, calling of the Respondent's submission under rule 133(1) was time barred in the instant case. In this regard, the Authority finds that the time limits prescribed under Rule 129(6) and 133(1) are only directory and are not mandatory as no consequences have been provided in the above Rules or the CGST Act, 2017 in case these limits are not observed. The Hon'ble High Court of Delhi while considering the time limit prescribed under Rule 133(1) vide its order dated 27.01.2020 passed in W. P. (C) 969/2020 in the case of M/s Nestle India Ltd. & another. v. Union of India others has ruled as under:-

> *"We also observe that prima facie, it appears to us that the limitation of period of six months provided in Rule 133 of the CGST Rules, 2017 within which the Authority should make its order from the date of receipt of the report of the Directorate General of Anti Profiteering, appears to be directory in as much as no consequence of non-adherence of the said period of six months is prescribed either in the CGST Act or the rules framed thereunder."*

Reliance is also placed on the judgment of the Hon'ble Supreme Court in the case of ***Mahadev Govind Gharge v. Special Land Acquisition Officer (2011) 6 SCC 321*** wherein it was held that:-

> *"37. Procedural laws, like the Code, are intended to control and regulate the procedure of judicial proceedings to achieve the objects of justice and expeditious disposal of cases. The*

provisions of procedural law which do not provide for penal consequences in default of their compliance should normally be construed as directory in nature and should receive liberal construction. The Court should always keep in mind the object of the statute and adopt an interpretation which would further such cause in light of attendant circumstances. To put it simply, the procedural law must act as a linchpin to keep the wheel of expeditious and effective determination of dispute moving in its place. The procedural checks must achieve its end object of just, fair and expeditious justice to parties without seriously prejudicing the rights of any of them."

Reliance in this regard is further placed on the following judgement of the Hon'ble Supreme Court in the case of ***P. T. Rajan v. T. P. M. Sahir and Ors. (2003) 8 SCC 498***:-

"48. It is well-settled principle of law that where a statutory functionary is asked to perform a statutory duty within the time prescribed therefore, the same would be directory and not mandatory. (See Shiveshwar Prasad Sinha v. The District Magistrate of Monghur & Anr. AIR (1966) Patna 144, Nomita Chowdhury v. The State of West Bengal & Ors. (1999) CLJ 21 and Garbari Union Co-operative Agricultural Credit Society Limited & Anr. V. Swapan Kumar Jana & Ors. (1997) 1 CHN 189).

49. Furthermore, a provision in a statute which is procedural in nature although employs the word "shall" may not be held to be mandatory if thereby no prejudice is caused."

10. The Respondent vide his submissions has further stated that methodology currently applied was flawed, biased and unscientific and tax paid on services was not a benefit when compared to the pre-GST regime, by any stretch of imagination. The report of the DGAP was oblivious to this basic and important fact. Service Tax 15% was paid up to 30.06.2017 and the GST was paid @ 18% thereafter on services. In both the circumstances, the cost of the service remains the same to the Respondent. It therefore goes without saying that a mere increase of the tax from 15% to 18% was not a benefit. The Authority finds that the methodology adopted by the DGAP was correct and strictly as per law enshrined in Section 171 of the CGST Act. The methodology adopted by the DGAP has been consistently office upheld by NAA in all similar cases including the Order No. 49/2019 dated 14.10.2019 passed in case of project "Nikoo Homes-II" of the Respondent himself. The main

contours of the 'Procedure and Methodology' for passing on the benefits of reduction in the rate of tax and the benefit of ITC are enshrined in Section 171 (1) of the CGST Act, 2017 itself which states that "Any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices." It is clear from the perusal of the above provision that it mentions "reduction in the rate of tax on any supply of goods or services" which does not mean that the reduction in the rate of tax is to be taken at the level of an entity/group/company for the entire supplies made by it. Further, the amount of the additional benefit of ITC required to be passed on, was the amount paid by the customers or flat buyers to the Respondent in the form of GST charged from them which was to be deposited by the Respondent to the Government exchequer. But the Respondent instead of paying this GST amount in cash to the Government exchequer utilised the ITC available to him in addition to the credit which was not available to him in pre-GST period. Therefore, the Respondent was not required to pay anything from his own pocket to pass on the benefit of additional ITC accrued to him in GST period. Hence, the methodology adopted by the DGAP is correct and justifiable. In the erstwhile pre-GST regime, 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. For example, the ITC of Central Sales Tax, which was being collected and appropriated by the States, was not admissible. Similarly, 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 got embedded in the cost of the goods or services supplied, resulting in increased price. With the introduction of GST with effect from 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 GST 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 GST Act, 2017. Therefore, the approach & methodology adopted by the DGAP was in consonance with the provisions of Section 171 of the CGST Act, 2017.

11. With respect to the contention of the Respondent that the provision of section 171 of CGST Act, 2017 be applied for the project as a whole and not for a specified period and comparison of the input credits with output taxes should be taken qua project covering the entire life span, the Authority finds that the Respondent has availed Input Tax Credit every month by filing GSTR-3B returns in-spite a long gestation period of his project. The Respondent could not enrich himself at the expense of the flat buyers by denying them the benefit of ITC till completion of the project while he used the same in his business for discharging his output tax liability every month. The Respondent has to make periodical assessment of the ITC benefit and pass it on to the eligible flat buyers on each and every demand raised by them. The Respondent could always make adjustments in case more or less benefit was passed on at the final computation and payment of the benefit. Therefore, the averment made by the Respondent is not tenable.

12. The Respondent has contended that the Input Tax Credit and the amount realised from the customers has no correlation. In this regard the Authority finds that as the Respondent is utilising ITC while discharging his GST output liability, out of the ITC available to him on the basis of the turnover i.e cost realised by him from the Home/Flat buyers/recipients of supply, hence, there is a direct correlation between the Input Tax Credit and the amount realized from the Home/Flat buyers/recipients of supply. The benefit has to be passed on the additional ITC proportionate to the payment made by a customer.

The DGAP's Report dated 27.11.2020 also states that the input tax credit pertaining to the unsold units do not fall within the ambit of

this investigation and the Respondent was required to recalibrate the selling price of such units to be sold to the prospective buyers by considering the net benefit of additional input tax credit available to them post-GST. Therefore, the proportionate credit of GST on expenses incurred attributable to such unsold units was outside the scope of impugned investigation. The DGAP has computed the benefit of ITC on the area sold and the turnover received on such area. The DGAP had neither computed the benefit on the unsold area nor the Respondent was being asked to pass on the benefit on the unsold area and hence, the ITC relevant to this area would remain intact with the Respondent which he could reverse at the time of receipt of Occupancy Certificate. Therefore, the contention raised by the Respondent on the above ground is unacceptable.

13. Upon perusal of Para 17 of the Report of the DGAP and the documents placed on record it is apparent that above computation of profiteering was with respect to 85 home buyers from whom construction value had been received by the Respondent during the period 01.07.2017 to 31.010.2019 (excluding the flats sold post 01.07.2017). This was on account of the fact that, the Respondent had booked 121 flats till 31.10.2019, but, the Respondent had claimed that he had sold 36 flats after 01.07.2017 at the rates agreed by the customers as all inclusive price after considering the market condition, escalations, demand – supply balance, GST benefit/ concession, development in the locality, location of the land, proximity to education institutions/hospitals/airport etc.

14. It is clear from the plain reading of Section 171(1) mentioned above that it deals with two situations: - one relating to the passing on the benefit of reduction in the rate of tax and the second pertaining to the passing on the benefit of the ITC. On the issue of reduction in the tax rate, it is apparent from the DGAP's Report that there has been no reduction in the rate of tax in the post GST period; hence the only issue to be examined is as to whether there was any net benefit of ITC with the introduction of GST. On this issue it has been revealed from the DGAP's Report 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 3.36% and during the post-GST period (July-2017 to October-2019), it was 4.27%. This confirms that, post-GST, the Respondent has been benefited from additional ITC to the tune of 0.91% (4.27%-3.36%) of his turnover and the same was required to be passed on to the home buyers/shop buyers/recipients of supply. The DGAP has calculated the amount of ITC benefit to be passed on to all the home buyers/shop buyers/recipients of supply as Rs. 50,09,158/-which includes the GST @ 18% on the base amount of Rs. 42,45,049/- on the basis of the information supplied by the Respondent and hence this Authority agrees with the methodology adopted by the DGAP and the profiteered computed by the DGAP in its Report.

15. In view of the discussions above, the Authority finds that the Respondent has profiteered by an amount of Rs. 50,09,158/- during the period of investigation i.e. 01.07.2017 to 31.10.2019. The above amount of Rs. 50,09,158/- (including 18% GST) that has been profiteered by the Respondent from his home buyers/shop buyers/recipients of supply, shall be refunded by him, along with interest @18% thereon, from the date when the above amount was profiteered by him till the date of such payment, in accordance with the provisions of Rule 133 (3) (b) of the GCST Rules 2017.

16. We find no reason to differ from the above-detailed computation of profiteering and hence the profiteered amount for the period from 01.07.2017 to 31.10.2019, in the instant case, is determined as Rs. 50,09,158/-. This Authority under Rule 133 (3) (a) of the CGST Rules, 2017 orders that the Respondent shall reduce the prices to be realized from the home buyers/shop buyers/recipients of supply commensurate with the benefit of ITC received by him as has been detailed above.

17. The Respondent is also liable to pay interest as applicable on the entire amount profiteered, i.e. Rs. 50,09,158/-. Hence the Respondent is directed to also pass on interest @18% to home buyers/shop buyers/recipients of supply, on the entire amount profiteered, starting from the date from which the above amount was profiteered till the date of passing on/ payment, as per provisions of

Rule 133 (3) (b) of the CGST Rules 2017.

18. The complete list of home buyers/shop buyers/recipients of supply with the details of amount of benefit of ITC to be passed along with interest @ 18% is furnished in the below Table:-

Sr. No.	Code of Home buyers	Name of the Homebuyer	Amount of benefit of ITC to be passed on
1	2723	Rizwan Patel	22,707 /-
2	2755	C.M. Mahesh	23,892 /-
3	3585	Sarada Giri	62,659 /-
4	2732	Mohamed Sadiq	23,752 /-
5	2754	Tabassum Yasin Khan	47,108 /-
6	2726	Anurag Jain	32,134 /-
7	2799	Haresh Jethanand Vaswani	86,794 /-
8	2746	P.S. Sridhar	23,892 /-
9	2823	Mahipal Reddy. Madinur	53,781 /-
10	4099	Anusuya	41,807 /-
11	2737	Kiran Sandip Rego	31,622 /-
12	2766	Sitangshu Supakar	47,108 /-
13	2769	Rajkumar Chandran	54,027 /-
14	2788	N. Murugesh	29,867 /-
15	4384	Puya Kirpalani	59,496/-
16	2787	Deepak Kumar	36,148 /-
17	4179	Arvind Nair	46,463 /-
18	2727	Albert Lobo	23,223 /-
19	2743	Shivani Garg	36,458 /-
20	3712	Devineni VSRK Ranga Rao	87,601 /-
21	2733	Solur Vishwanath Bharath	31,793 /-
22	2765	Shibu Jose	49,414 /-
23	2771	Sujatha Visweswara	30,464 /-
24	2749	Ravindranath Narayana	33,121/-
25	2748	Narendra Narayana	49,414 /-
26	2729	Nagaraj Devaraj	23,740/-
27	2728	Jayasheela	20,642 /-
28	2938	Haresh Ashok Sakhrani	89,216 /-
29	2806	Prakash N Jain	46,009 /-
30	3587	Vijaya Guntumadugu	64,241 /-
31	2809	Vinod Rao Nikkam	90,002 /-
32	2803	Manisha Goel	38,496 /-
33	2730	Ipsitha Pradayini URS	73,483 /-
34	2773	Kirti Kumar Mehta	43,431 /-
35	4130	Ipsitha Pradayini Urs	42,944 /-
36	2717	Indravadan Kantilal Tarachand Shah	51,560 /-
37	2731	Ashif Mohammed Pallam Mohammed	24,773 /-
38	2772	Alok Saigal	31,559 /-
39	2744	Mohammed Taiyeb	34,620 /-
40	2725	Deepika Goyal	24,767 /-
41	3299	Kamala R Rao	47,648 /-
42	3589	K.P.C. Mohamed Kunhi	70,040 /-
43	2736	Smitha Kota	34,620 /-
44	3328	Radhika Malla	34,893 /-

45	2722	Mariamma K.M.	37,032 /-
46	3787	Srinivas Nagaraja Samprathi	49,948 /-
47	2718	Prafulla Sridhar	46,107 /-
48	2764	Ambat Somu Kumar	68,801 /-
49	3790	Mahesh Makam	87,084 /-
50	3819	Maya Pradeep	46,722 /-
51	2752	Kudale Yogesh Arvind	36,083 /-
52	2763	Shriharsha Imrapur	52,874 /-
53	2747	Shivananda Mallapa Dambal	25,769 /-
54	2762	Suchindra B.R.	27,178 /-
55	2721	Deepa Jhaveri	45,853 /-
56	2761	Mala Dharmalingam	54,027 /-
57	2758	Rajeev Somanathan	27,122 /-
58	2738	Suraj Kunhiraman	36,118 /-
59	2781	Kempe Gowda	12,243 /-
60	2756	Rayees Ahmad Salahuddin	26,330 /-
61	2790	Janhavi D.Y.Hema	56,866 /-
62	2745	Gopal Shivapuja	55,310 /-
63	2808	Krishna Agarwal	43,768 /-
64	2753	Parabolic Hospitalities Services (P) Ltd	30,606 /-
65	3406	Ramakant.S.Vernekar	49,774 /-
66	4189	M.R.Shreeshan	67,593 /-
67	4370	Rukmini Kanjirath	1,43,897 /-
68	4663	Rajeev Somanathan	55,109 /-
69	4094	Sutapa Nair	47,604 /-
70	4095	Avinash C Kampli	96,482 /-
71	4287	Suhail Sultan Dar	65,295 /-
72	4286	Shuja Sultan Dar	65,295 /-
73	4093	S.Kanchana Malliga	42,186 /-
74	4082	Vivekananda.M	1,40,281 /-
75	2768	Satya Bhama Pandey	91,827 /-
76	2757	Anita Purnesh	1,97,826 /-
77	3066	Avinash D B	1,71,461 /-
78	4129	Shalini Menon	2,94,974 /-
79	4074	K.Ashok Udupa	1,54,808 /-
80	4390	Haresh Jethanand Vaswani	1,46,135 /-
81	2795	Syed Firdous Hussain	90,769 /-
82	4421	Roben Dass	1,38,943 /-
83	2770	Bhagyam Nair	40,638 /-
84	2794	Dhirendra Kumar	56,821 /-
85	2810	Mili E Gandhi	34,171 /-
Total			**50,09,158 /-**

19. We also order that the profiteering amount of Rs. 50,09,158/- along with the interest @ 18% from the date of receiving of the profiteered amount from the home buyers/shop buyers/recipients of supply till the date of passing the benefit of ITC shall be paid/passed on by the Respondent within a period of 3 months from the date of receipt of

this order failing which it shall be recovered as per the provisions of the CGST Act, 2017.

20. It is evident from the above narration of facts that Respondent has denied the benefit of tax reduction to the customers in contravention of the provisions of Section 171 (1) of the CGST Act, 2017 and he has thus committed an offence under Section 171 (3A) of the above Act and therefore, he is liable for imposition of penalty under the provisions of the above Section. However, since the provisions of Section 171 (3A) have come into force w.e.f. 01.01.2020 whereas the period during which violation has occurred is w.e.f. 27.07.2018 to 30.09.2018, hence the penalty prescribed under the above Section cannot be imposed on Respondent retrospectively. Accordingly, Show Cause Notice directing him to explain why the penalty prescribed under Section 171 (3A) of the above Act read with Rule 133 (3) (d) of the CGST Rules, 2017 should not be imposed on him is not required to be issued.

21. The concerned jurisdictional CGST/SGST Commissioner is also directed to ensure compliance of this Order. It may be ensured that the benefit of ITC has been passed on to each home buyers/shop buyers/recipients of supply as per this Order along with interest @18% as prescribed. In this regard an advertisement may also be published in minimum of two local Newspapers/vernacular press in Hindi/English/local language with the details i.e. Name of builder (Respondent) –M/s Bhartiya Urban Pvt. Ltd. (Formerly known as Bhartiya City Developers Pvt. Ltd.)Project- "Leela Residences", Location: Bengaluru, Karnataka and amount of profiteering Rs.50,09,158/- so that the concerned home buyers/shop buyers/recipients of supply can claim the benefit of ITC if not passed on. Home buyers/shop buyers/recipients of supply may also be informed that the detailed NAA Order is available on Authority's website www.naa.gov.in. Contact details of concerned Jurisdictional CGST/SGST who are nodal officer for compliance of the NAA's order may also be advertised through the said advertisement.

22. The concerned jurisdictional CGST/SGST Commissioner shall also

submit a Report regarding compliance of this order to the Authority and the DGAP within a period of 4 months from the date of receipt of this order.

23. A copy of this order be sent to the Respondent, DGAP, Commissioners CGST/SGST Karnataka, the Principal Secretary (Town and Country Planning), Government of Karnataka as well as Karnataka RERA free of cost for necessary action. File to be consigned on completion.

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/226/BhartiyaUrban/2020 Dated: 08.09.2022

1. M/s. Bhartiya Urban Pvt. Ltd. No. 1/5, Palace Road, Bengaluru-560001.
2. Directorate General of Anti-Profiteering, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, New Delhi-110001.
3. Principal Chief Commissioner, CGST, C.R. Building Queen's Road, Bengaluru-560001.
4. CCT office, Vanijya Therige Karyalaya, Kalidasa Road, Ground Floor, Gandhinagar, BANGALORE-560009
5. Real Estate Regulatory Authority Karnataka 2nd floor, Silver Jubli Block, Unity Building, CSI Compound 3rd Cross, Misson Road Bengaluru, Karnataka 560027
6. Directorate of Town and Country Planning GPO PB- 5257,Multi-Storeyed Building Phase-4 Dr. B. R. Ambedkar Veedhi, Bengaluru, 560001.
7. Guard File.