BEFORE THE NATIONAL ANTI-PROFITEERING AUTHORITY

UNDER THE CENTRAL GOODS & SERVICES TAX ACT, 2017

I.O. No.	:	26/2022
Date of Institution	:	25.02.2021
Date of Order	:	30.09.2022

In the matter of:

1. **Sh. Vinod E,** J Block, Flat No. 703, Bollineni Silas, Sadarmangala Village, Near National Public School, Whitefield, KR Puram Hobli, Bengaluru-560067.
2. **Director General of Anti-Profiteering**, Central Board of Indirect Taxes & Customs, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.

Applicants

Versus

M/s Bollineni Developers Ltd., No. 23, Old 5, 3rd Floor, Sankey Square, Sankey Road, Lower Palace Orchards, Sadashiva Nagar, Bengaluru-560003.

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 No. 1
2. Sh. Chandrashekhar, Authorized Representive for the Respondent.

ORDER

1. The present report dated 25.02.2021 had been received by the National Anti-Profiteering Authority (**NAA or the Authority**) from the Director General of Anti-Profiteering (DGAP), i.e. Applicant No. 2, after a detailed investigation under Rule 129(6) of the CGST Rules, 2017. The brief facts of the case are that an Application was filed before the Karnataka State Screening Committee on Anti-profiteering under Rule 128 of the CGST Rules, 2017, by Applicant No. 1, alleging profiteering in respect of construction service

supplied by the Respondent. The Applicant No. 1 alleged that the Respondent had not passed on the benefit of Input Tax Credit to him by way of commensurate reduction in the price of the **Flat No. J 703, 7th floor** purchased from the Respondent in his project "**Bollineni Silas**", situated at Sadarmangala, K R Puram, Bangalore-560048 on introduction of GST w.e.f. 01.07.2017, in terms of Section 171 of the CGST Act, 2017.

2. The DGAP in his report dated 25.02.2021 had *inter alia*, stated that: -

a) The Karnataka State Screening Committee on Anti-Profiteering examined the said Application and forwarded the same with his recommendation, to the Standing Committee on Anti-Profiteering for further action, in terms of Rule 128 of the Rules.

b) The aforesaid application was examined by the Standing Committee on Anti-profiteering, which decided to forward the same to the DGAP to conduct a detailed investigation in the matter. Accordingly, investigation was initiated to collect evidence necessary to determine whether the benefit of Input Tax Credit had been passed on by the Respondent to the Applicant No. 1 in respect of construction service supplied by the Respondent.

c) 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, calling upon the Respondent to reply as to whether he admitted that the benefit of input tax credit had not been passed on to the Applicant No. 1 by way of commensurate reduction in price and if so, to *suo moto* determine the quantum thereof and indicate the same in his reply to the Notice as well as furnish all supporting documents. Vide the said Notice, the Respondent was also given an opportunity to inspect the non-confidential

evidences/information furnished by the Applicant No. 1. However, the Respondent did not avail of this opportunity.

d) The period covered by the current investigation was from 01.07.2017 to 30.04.2020.

e) The time limit to complete the investigation was upto 05.11.2020, however, vide Notification No. 65/2020 dated 01.09.2020 and Notification 91/2020-Central Tax dated 14.12.2020, the time limit to complete the investigation was extended up to 31.03.2021.

f) In response to the Notice dated 10.06.2020, the Respondent submitted his replies vide letters/e-mails dated 29.06.2020, 30.06.2020, 23.07.2020, 05.08.2020, 25.11.2020, 27.11.2020, 28.12.2020, 07.01.2021, 15.01.2021, 19.01.2021 and 27.01.2021.

g) An opportunity was given to the Applicant No. 1 to inspect the non-confidential documents/reply furnished by the Respondent on 22.02.2021 and 23.02.2021. However, Applicant No. 1 did not avail the said opportunity.

h) The Respondent stated that he was engaged in business of development of real estate projects and execution of civil contracts such roads and irrigations. The Occupancy Certificate for the project "**Bollineni Silas**" was received on 03.03.2020. The Respondent also informed that he had given discount to the buyers against changes in tax structure.

i) Vide the aforementioned letters, the Respondent submitted the following documents/information:

i. Copies of GSTR-1 returns for the period July, 2017 to April, 2020.

ii. Copies of GSTR-3B returns for the period July, 2017 to April, 2020.

iii. TRAN-1 for the period July, 2017 to December, 2017.

iv. Electronic Credit Ledger for the period July, 2017 to April, 2020.

v. Copies of VAT returns (including all annexures) & ST-3 returns for the period April, 2016 to June, 2017.

vi. Copies of all demand letters issued and sale agreement made with the Applicant.

vii. Copy of Balance Sheet for FY 2016-17, 2017-18 & 2018-19.

viii. Details of VAT, Service Tax, ITC of VAT, CENVAT credit for the period April, 2016 to June,2017 and output GST and ITC of GST for the period July, 2017 to April,2020 for the project "Bollineni Silas".

ix. CENVAT/Input Tax Credit Register for the FY 2016-17, 2017-18, 2018-19 and for the period April, 2019 to April,2020.

x. List of home buyers for the project "Bollineni Silas".

xi. Brief profile of the Respondent.

xii. Details of applicable tax rates, Pre-GST and Post-GST.

xiii. Status of Project as on 30.04.2020.

xiv. Copy of Occupancy Certificate.

j) The subject application, various replies of the Respondent and the documents/evidences on record had been carefully examined. The main issues for determination are: -

i. Whether there was benefit of reduction in rate of tax or input tax credit on the supply of construction service by the Respondent after implementation of GST w.e.f. 01.07.2017 and if so,

ii. Whether the Respondent passed on such benefit to the recipients by way of commensurate reduction in price, in terms of Section 171 of the CGST Act, 2017.

k) Another relevant point in this regard was para 5 of Schedule-III of the CGST Act, 2017 (Activities or Transactions which shall be treated neither as a supply of goods nor a supply of services) which reads as "*Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building*". Further, clause (b) of Paragraph 5 of Schedule II of the CGST Act, 2017 reads as "(b) *construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration had been received after issuance of completion certificate, where required, by the competent authority or after his first occupation, whichever was earlier*". Thus, the Input Tax Credit pertaining to the residential units which was under construction but not sold was provisional Input Tax Credit which might be required to be reversed by the Respondent, if such units remain unsold at the time of issue of the completion certificate, in terms of Section 17(2) & Section 17(3) of the CGST Act, 2017, which read as under:

Section 17 (2) "*Where the goods or services or both was used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act and partly for effecting exempted supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as was attributable to the said taxable supplies including zero-rated supplies*".

Section 17 (3) "*The value of exempted supply under sub-section (2) shall be such as might be prescribed and shall include supplies on which the recipient was liable to pay tax on reverse charge basis, transactions in securities, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building*".

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

l) The Respondent submitted that he had passed on discount to the buyers against changes in tax structure and for the same vide letter dated 03.02.2021, the Respondent were asked to submitted all the documentary evidences to support his claim that benefit of GST ITC was already passed on to the buyers in terms of Section 171 CGST Act,2017 but the Respondent failed to do so. Hence, the above contention of the Respondent was not accepted.

m) As regards the allegation of profiteering, prior to 01.07.2017, i.e., before the GST was introduced, the Respondent were eligible to avail Service Tax paid on the input services (CENVAT credit of Central Excise duty was not available) in respect of the flats for the project "Bollineni Silas" sold by them. The Respondent were not eligible to avail input tax credit of VAT paid on the inputs as he had opted for composition scheme in the VAT regime. Further, post-GST, the Respondent could avail input tax credit of GST paid on all the inputs and input services. From the data submitted by the Respondent covering the period April, 2016 to April,2020, the details of the Input Tax Credit availed by them, his turnover from the project "**Bollineni Silas**" and the ratio of input tax credit to turnover, during the pre-GST (April, 2016 to June, 2017) and post-GST (July, 2017 to April, 2020) periods, was furnished in table-A below.

Table- 'A'

(Amount in Rs.)

Sr.No	Particulars	Total (Pre-GST) April, 2016 to June, 2017	Total (July, 2017 to April,2020)
1.	CENVAT of Service Tax Paid on Input Services used for flats (A)	3,94,65,898	-
3.	Input Tax Credit of GST Available (B)	-	24,85,80,476
4.	Total CENVAT/Input Tax Credit Available (C)= (A or B)	3,94,65,898	24,85,80,476
5.	Turnover for Flats as per Home Buyers List (D)	18,92,50,513	1,83,96,55,636
6.	Total Saleable Area (in SQF) (E)	6,74,475	6,74,475
7.	Total Sold Area (in SQF) relevant to turnover (F)	93,590	4,77,645
8.	Relevant ITC [(G)= (A or B)*(F)/(E)]	54,76,279	17,60,37,987
Ratio of Input Tax Credit Post-GST [(H)=(G)/(D)]		**2.89%**	**9.56%**

n) From the above Table-A, it was clear that the ITC as a percentage of the turnover that was available to the Respondent during the pre-GST period (April, 2016 to June, 2017) was 2.89 % and during the post-GST period (July, 2017 to April,2020), it was 9.56% for the project "Bollineni Silas". This clearly confirms that in post-GST period, the Respondent had benefited from additional input tax credit to the tune of 6.67% [2.89% (-) 9.56%] of the turnover.

o) The Central Government, on the recommendation of the GST Council, had levied 18% GST (effective rate was 12% in view of 1/3rd abatement for land value) on construction service, vide Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017. The effective GST rate was 12% for flats. Accordingly, on the basis of the figures contained in table- 'B' above, the comparative figures of the ratio of input tax credit to the turnover in the pre-GST and post-GST periods as well as the turnover, the recalibrated base price and the excess realization (profiteering) during the post-GST period, was tabulated in Table-B below.

Table-B

Sr.No.	**Particulars**		
1	**Period**	**A**	**July, 2017 to April,2020**
2	Output GST rate (%)	B	12
3	Ratio of CENVAT credit to Total Turnover in pre GST period as per Table - 'A' above (%)	C	2.89%
4	Ratio of Input tax credit to Total Turnover in post GST period as per Table - 'A' above (%)	D	9.56%
5	Increase in input tax credit availed post-GST (%)	E= 9.56% *less* 2.89%	6.67%
6	**Analysis of Increase in input tax credit:**		
7	Demand raised/Advances received during July, 2017 to May,2020 (Rs.) *	F	1,83,96,55,636
8	GST raised over Base Price (Rs.)	G= F*B	22,07,58,676
9	Total Demand raised	H=F+G	2,06,04,14,312

10	Recalibrated Base Price	I= F*(1-E) or 93.33% of E	1,71,69,50,605
11	GST @12%	J = I* B	20,60,34,072
12	Commensurate demand price	K = I+J	1,92,29,84,677
13	**Excess Collection of Demand or Profiteering Amount (in Rs.)**	**L= H–K**	**13,74,29,635**

*The demand raised/advances received during the period 01.07.2017 to 30.04.2020 was net of post O.C. sales. (i.e. excluding 11 buyers who had booked flats after O.C.)

p) From the calculation explained in Table-B based on the Respondent's submission, that the benefit of ITC which needed to be passed on by the Respondent to the buyers of flats comes to Rs. 13,74,29,635/- which included 12% GST on the base amount of Rs. 12,27,05,031/- during the period 01.07.2017 to 30.04.2020 in respect of 373 (384-11 (Post OC sold units) =373) buyers including the Applicant No. 1. The homebuyer and unit no. wise break-up of this amount was given. This amount was inclusive of profiteered amount of Rs 4,97,806/- (including GST) in respect of the Applicant No. 1.

q) On the basis of the details of outward supplies of the construction service submitted by the Respondent, it was observed that the service had been supplied in the State of Karnataka only.

r) From the above discussion, it appeared that the benefit of additional ITC to the tune of 6.67% of the turnover, accrued to the Respondent post-GST and the same was required to be passed on by the Respondent to his recipients. Section 171 of the CGST Act, 2017 appears to had been contravened by the Respondent, in as much as the additional benefit of input tax credit @6.67% of the base price received by the Respondent during the period 01.07.2017 to 30.04.2020, had not been passed on by the Respondent to the Applicant No. 1 and 372 other recipients. On this account, it appeared that the Respondent had realized an additional amount to the tune of 13,74,29,635/- (including GST) which was inclusive of profiteered amount of Rs 4,97,806/-

(including GST) in respect of the Applicant No. 1. The Applicant No. 1 and 372 other recipients was identifiable as per the documents provided by the Respondent, giving the names and addresses along with unit.no. allotted to such recipients.

s) As aforementioned, the present investigation covers the period from 01.07.2017 to 30.04.2020. Profiteering, if any, for the period post April,2020, had not been examined as the exact quantum of input tax credit that would be available to the Respondent in future cannot be determined at this stage, when the construction of the project was yet to be completed.

t) In view of the aforementioned findings, it appears that Section 171(1) of the CGST Act, 2017, requiring that "*any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices*", had been contravened in the present case.

3. The above Report dated 25.02.2021 was carefully considered by this Authority and a Notice dated 10.03.2021 was issued to the Respondent to explain why the Report dated 25.02.2021 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 14.07.2021 wherein the Respondent had, inter-alia submitted following: -

A: The applicant had booked the flat during the post-GST period i. e. on 16 Nov, 2018 and during the such period there was no any change in the rate of GST and hence the provisions of section 171 of GST Act does not apply in this case.

Applicant No. 1 who booked the Flat No.J703, 07th floor in the J-Block of 'Bollineni Silas' vide construction agreement dated 16.11.2018 (i.e. agreed in constructing and owning apartment was being constructed in a phased manner) in which he had purchased above flat (measuring to 1390 sft) @ Rs 67,78,367/- (including amenities and taxes and pass on charges) and the

entire price of consideration had been paid during 16 Nov 2018 to 8th March 2019. Further, as per Section 171 (1) 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" Thus, the supplier of taxable goods or service was required to pass on the benefit accruing to him on the following two accounts

i. Reduction in rate of tax

ii. Availability of additional Input Tax Credit

On the issue of reduction in the tax rate, it was apparent from the DGAP's Report that there had been no reduction in the rate of tax in the post GST period, hence the only issue to be examined was as to whether there was any additional benefit of ITC with the introduction of GST availed by the Respondent or not. Therefore, in the present case the applicant had booked the flat during the post-GST period i.e. on 16 Nov 2018 and during the such period there was no any change in the rate of GST and hence the provisions of section 171 of GST Act does not apply in this case. Further, with respect to the flats booked on or after 01 07 2017, the question of anti-profiteering would not arise as the savings in credit had already been considered to determine the price at which flats was sold on or after 01.07.2017 as per the agreement entered with the home-buyers. Further, the price agreed between the Respondent and such unit buyer was already negotiated prices after the introduction of GST Hence, the provisions of section 171 of GST Act was not applicable to said applicant's booking and hence, the proceedings as initiated u/s 171 of the Act might be dropped.

B: No reduction in output rate of GST either from the pre-GST period to post-GST period or during the post-GST period to till date, hence the provisions of section 171 of GST Act does not apply in this case.

As per Section 171 (1) any reduction in rate of output 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. Hence, in terms of Section 171 of the CGST Act, 2017 the whole idea was to pass on the benefit of a reduction in the rate of output tax or increase in the rate of ITC to the buyer. In case of benefit of ITC, it was to be worked out as to how much of the ITC which was inbuilt in costs of the supplier prior to GST was made available to such Supplier post-GST and thus, such benefit should be passed onto the buyer as the cost of the supplier for construction or provision of such supply had gone down and such benefit should be passed onto the buyer.

In the instant case, the effective rate of tax (i.e. Service tax and VAT in pre-GST resume) on supply of construction service to the customers had been increased from 11% [i.e. 6% (Service Tax) + 5% (Karnataka VAT as register dealer] to 12% (GST). Accordingly, there was no drop in case of real estate sector in rate of output tax (GST) when compared to pre-GST period. Therefore, no benefit was required to be passed on to the buyers of flats on account of reduction in the rate of tax. Hence the only issue to be examined was as to whether there was any additional benefit of ITC with the introduction of GST availed by the Respondent or not.

C. The proposed Anti-profiteering of additional benefit input tax credit as arrived by the DGAP was need to be revised as the DGAP was required to consider certain items as detailed below in Table-A of calculating ratio of ITC to the turnover and hence, to the extent of such ignored/resubmitted items the alleged additional benefit of input tax. credit need to be revised.

As per the master sheet of home buyers list the total area of both pre-GST and post-GST period's home buyer bookings was 1,21,095 Sqft. and 3,76,015 Sqft. respectively only. However, in Table-A the DGAP, while arriving the Ratio of post-GST Input Tax Credit to turnover (post-GST) had considered the area of pre-GST and post-GST period's home buyer bookings as 93,825 Sqft. and 4,77,645 Sqft. instead of 1,21,095 Sqft. and 3,76,015 Sqft. respectively only. Hence, the Respondent requested that the DGAP had to consider area of both pre-GST and post-GST

period's home buyer bookings as 1,21.095 Sqft. and 3,76,015 Sqft. respectively. The Respondent was herewith re-submitting the details of pre-GST and post-GST period's home buyer bookings for the period under consideration (1.e. April 2016 to April, 2020) in master sheet of home buyers list.

In respect of turnover as per Home buyers list towards demand raised of Rs. 209,82,37,261/- during post-GST period, the DGAP, while calculating the Ratio of post-GST Input Tax Credit to the turnover (post-GST), had considered the amount received of Rs.183,97,15,637/- against said demand raised (from all the customers who booked the flats upto April, 2020) and ignored to consider the pending/receivable of Rs.25,85,21,624/- against said demand. Accordingly, having ignored to consider the pending/receivable of Rs.25,85,21,624/- against said demand it was resulted in higher side ratio of post-GST ITC to the turnover (post-GST) which was not correct and not justifiable under the GST provisions Therefore, for the purpose of computing the relevant ITC in Table -A, the DGAP was required to consider the said pending/receivables o Rs.25,85,21,624/- against demand raised. The Respondent was herewith re submitting the details of said pending/receivables against demand raised in master sheet of home buyers list.

With regards to the allegation of anti-profiteering **of additional benefit input tax credit,** it was to submitted that prior to 01.07.2017, i.e., before the GST was introduced;

a. The Respondent was eligible to avail Service Tax paid on the input services and capital goods in respect of the flats sold (Service tax CENVAT credit had already been considered by the DGAP)

b. Further, in respect of VAT/ WCT credit under Karnataka Value Added Tax Act, both under composition and non-composition scheme, whenever the sub-contractor paid WCT on his turnover, the main-contractor was eligible to avail the credit of

such WCT/deduction of such sub-contract's turnover from his turnover and vice versa. Hence, the Respondent was eligible to avail the credit of WCT/deduction of turnover (on which WCT tax was paid by the sub-contractor). Accordingly, the turnover declared by the Respondent in the VAT returns for the period ending 30 June, 2017 was Rs.61,11,68,770 and on which the WCT paid by the sub-contractor @ 5% was Rs.3,05,58,439/- for the which the Respondent (as main-contractor) was entitled for WCT credit as per the provisions of Karnataka VAT Act. Further, the Respondent had been assessed under Karnataka VAT Act and, wherein, the Authority allowed the WCT credit i.e. deduction of turnover on which the sub-contractor had paid the WCT. The details of relevant clause under Karnataka Value added Tax Act and copy of assessment orders had been provided for immediate reference. Hence, it was requested to consider the said WCT tax credit for the pre-GST period in calculating ratio of pre-GST ITC to the turnover (pre-GST).

Therefore, the DGAP was required to consider the WCT credit to the tune of Rs.3,05,58,439/-, hence it was requested to consider the said WCT credit which the Respondent was entitled under Karnataka Value Added Tax Act.

The DGAP, while taking the recalibrated base price for the purpose of calculating the excess collection of demand or ant profiteering, had applied the Ratio of Post-GST Input Tax Credit to the turnover (post-GST) on total demand received from the home buyers without excluding the demand received from the home buyers who made the bookings of flats during the post-GST period i.e. on or after 01.07.2017 for the reason that there was neither change in the rate of tax nor any benefits of additional ITC. Further, with respect to the flats booked on or after 01.07.2017, the question of anti-profiteering would not arise as the price agreed between the Respondent and such unit home buyer was already negotiated prices after the introduction of GST.

Accordingly, while calculating the Ratio of post-GST Input Tax Credit to the turnover (post-GST) in arriving the excess collection of demand

or anti-profiteering, for the purpose of recalibrated base price the DGAP was required to consider only the amount received and receivable against demand raised on the home buyers who made the booking of flats during the pre-GST period excluding the demand received from the home buyers who made the bookings of flats during the post-GST period i.e. on or after 01.07.2017 and details of the same as per the home buyers list was as follows:

Sr. No.	Description of collection	GST Period		Total
		Against the booking made during Pre-GST period	Against the booking made during Post GST period	
1	Demand received against customer's demand raised	24,14,97,657	159,82,17,980	183,97,15,637
2	Demand receivable against Customer demand raised	1,71,59,045	24,13,62,579	25,85,21,624
	Total	25,86,56,702	183,95,80,559	209,82,37,261

Accordingly, for the purpose of recalibrated base price, from the total demand received during post-GST period of Rs.183,97.15,647/-. It was required to reduce the demand received pertaining to post-GST home buyers of Rs.159,82,17,980/- and accordingly it was required to arrive the demand received in post-GST period pertaining to home buyers booking in pre-GST period of Rs. 24,14,97,657/- for the purpose of recalibrated base price. The Respondent was herewith re-submitting the details of said demand details in master sheet of home buyers list.

Accordingly, the revised calculation after incorporating the said observations and revised proposed Anti-profiteering amount as arrived was as follows:

Table – 'A'

Sr. No	Particulars	**Total (Pre-GST) April,2016 to July,2017**	**Total (July,2017 to April, 2020)**
1	CENVAT of Service Tax Paid on Input Services used for flats (A)	3,94,65,898	-
2	VAT/WCT credit on sub-contract (A-1)	3,05,58,439	-

3	Input Tax Credit of GST Available (B)	-	21 85,80,476
4	Total CENVAT/Input tax credit available C= (A,A1 or B)	7,00,24,337	21 85,80,476
5	Collection received/receivable against demand for Flats as per Home Buyers list (d-1)	18,92,50,513	183,97,15,637
	Add: Collection received/receivable against demand for Flats as per Home Buyers list (d-2)	-	25,85,21,624
	Total Collection received/receivable against demand for Flats as per Home Buyers list (D)(d1+d2)	18,92,50,513	209,82,37,261
6	Total Saleable Area (in SQF) (E)	6,74,475	6,74,475
7	Total Sold Area (in SQF) relevant to turnover (F)	1,21,095	3,76,015
8	Relevant ITC (G)- (A+ A1) or B)*(F)/(E)}	1,25,72,144	12,18,57,056
Ratio of Input Tax Credit post-GST{(H)=((G)/(D)}		**6.64%**	**5.81%**

From the above table-A", 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 6.64 % and during the post-GST period (July, 17 to April, 2020), it was 5.81% for the project "Bollineni Silas" and the revised ratio of additional input tax credit comes to the tune of (-) 0.84% [5.81% (-) 6.64%) of the turnover. Further, the Central Government, on the recommendation of the GST Council, had levied 18% GST (effective rate was 12% in view of 1/3rd abatement for land value) on construction service, vide Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017. The effective GST rate was 12% for flats. Accordingly, on the basis of the figures contained in table- 'B' below, the comparative figures of the ratio of input tax credit to the turnover in the pre-GST and post-GST periods, the recalibrated base price and the excess realization (profiteering) during the post-GST period, was tabulated as below:

TABLE B

Sr.No.	Particulars

1	**period**	**A**	**July, 2017 to April, 2020**
2	Output GST rate (%)	B	12%
3	Ratio of CENVAT credit to Total Turnover in pre GST period as per Table A above (%)	C	6.64%
4	Ratio of Input tax credit to Total Turnover in post GST period as per Table A above(%)	D	5.81%
5	Increase in input tax credit availed post -GST(%)	E=5.81% less 6.64%	-0.84%
6	**Analysis of Increase in input tax credit**		
	Demand raised and advances received during July, 2017 to April,2020	F-1	183,97,15,637
	Less: Demand received against home buyers who made the bookings of flats during Post- GST period	F-2	1,59,82,17,981
7	Net Demand raised during the Post-GST period against home buyers who made booking of flats during pre-GST period.	F(F1-F2)	1.83.96,53,636
8	GST raised over Base Price (Rs.)	G=F*B	2,89,79,719
9	Total Demand raised	H=F+G	27,04,77,376
10	Recalibrated Base Price	I=F*(1-E) or 100.84% of E	24,35,15,445
11	GST @12%	J=I*B	2,92,21,853
12	Commensurate demand price	K=I +J	27,27,37,299
13	**Excess Collection of Demand or Profiteering Amount (in Rs.)**	**L=H-K**	**22,59,923**

Therefore, based on the above Table, the Respondent had neither benefited from the additional ITC nor had there been any reduction of rate of output tax in the post period. Therefore, the provisions of Section 171 of the CGST Act, 2017 did not appear to be attracted to the present case of Respondent and it was requested to drop the proceedings as proposed by the DGAP against the Respondent.

D: Application of Anti-profiteering provisions to the customers who made the booking during the post-GST period was not correct and not justifiable as per the provisions of GST Act.

With respect to the flats booked on or after 01.07.2017, the Respondent maintains an objective cost data. The price agreed between the Respondent and such unit home buyer was already negotiated price after the introduction of GST i.e. the price at which flats was sold on or

after 01.07.2017. The details of objective data maintained by the Respondent was as follows:

a. sale price (mainly based on progressive of work i.e. considering the inventory carrying cost),

b. cost details (including additional cost incurred during post introduction of GST),

c. negotiated price, and

d. Input Tax Credit.

Based on such above objective data and as a matter of conservative approach, the average negotiated prices at which the flats booked on or after 01.07.2017 was lower when compared to negotiated prices during the pre-GST period. Hence, there was no element of the passing of benefit under Section 171(1) of the CGST Act/ SGST Act for unit home buyers whose agreement had been entered into in post introduction of GST, for the reason that there was neither change in the rate of tax nor there was any benefits of any additional ITC and the price agreed between the Respondent and such unit buyer was already negotiated prices after the introduction of GST.

Recently in March 2021, in case of M/s DRA Aadithya Projects Pvt. Ltd the Hon'ble Delhi High court had granted an interim stay on an anti-profiteering investigation by DGAP on a complaint filed by unit home buyers who had booked his units on or after 1 July 2017. The key argument advanced by the writ petitioner was that there was no element of the passing of benefit under section 171(1) of the CGST Act/ SGST Act for unit buyers whose agreement had been entered into during post introduction of GST, for the reason that there was neither change in the rate of tax nor there were any benefits of any additional ITC. The price agreed between the developer and such unit buyer was already negotiated prices after the introduction of GST.

Further, the Delhi High Court recently said that anti-profiteering provisions could apply only when there was change in either output tax rate or increased input tax credit. Further, the flats sold after RERA

registration in the GST regime would not be subject to profiteering at all especially when the builder had submitted not to opt for a lower regime i.e. opting for new 5% rate of tax. The Respondent not opted for a lower regime (i.e. opting for new flat GST 5% rate of tax without taking input tax credit) and continued under old regime i.e. declaring the output tax after adjusting the ITC.

E: The Anti-profiteering provisions do not apply in this case merely on account of home buyer price change during post-GST period as the Respondent incurred additional costs that leads to increased cost of development of project.

The Respondent started real estate development project in Bangalore, Karnataka for the first time and accordingly, as the Respondent was a developer to the market in the state of Karnataka and till the completion of the project the sale bookings were very slow and not even reached the break-even point. Further, the project experienced problems in execution like land clearances, inter departmental clearances, delay in disbursement of funds etc. causing delay in completion and resulting the same into increased cost during the post-GST construction period and which also led into stress on the cash flow for supporting the project.

Further, as the Respondent was new developer in the State of Karnataka, sale price was lower than the projected because of various macro-economic factors such as reducing the inventory carrying cost, to attract the customers and even Govt. clearances etc, and even the Bankers were also conservative or denying financing the real estate projects. Accordingly, Respondent had brought in private loans such as NBFC for early completion of the construction in order to boost the sales. Accordingly, all these had led to increasing the project cost. Further, the COVID-19 had made further slow in bookings of flats which leads to increasing the inventory carrying cost, change in sale price etc. Accordingly, due the above factors, the project experienced increased costs i.e. excess of expenditure incurred over revenue which was due to circumstances beyond the control of the Respondent. Further, the net-worth of Respondent had also been completely eroded. Statement of project revenue and cost incurred for the project of

'Bollineni Silas' and copy of audited balance sheet for the FY 2019-20 had been provided immediate reference.

F: The anti-profiteering provisions and the constitution of Authority under Rule 122 was unconstitutional.

The Authority, under the Goods & Services Tax Methodology and Procedure, 2018, had only provided the procedure, however, no methodology for computation of profiteering was provided. Accordingly, the taxpayer had been left to determination of such methodology at a future date while he was expected to pass the benefit as computed using such methodology at the advent of GST.

Further, in case of M/s Samsung India Electronics Pvt. Ltd. vs. Union of India & Orsit was contested that section 171 of the CGST Act and Rules 126, 127 and 133 of the CGST Rules be declared unconstitutional and ultra vires Articles 14, 19(1)(g), 246A, 265 and 300A of the Constitution. Further prayer was also made to declare the constitution of Authority under Rule 122 as unconstitutional. The said matter was presently under consideration before Hon'ble Delhi High Court.

Further, the said contention had also been followed in Phillips India Limited Vs. Union of India 80rs [TS-427-HC-2828(DEL)-NT, Ps. Samsonite South Asia Pvt. Ltd. Vs. Union of India & Ors. [15-546-HC-2828(DEL)-NT] and Patanjali Ayurved Ltd. Vs. Union of India & Ors. [15-572-HC 2828(DEL) NT].

Therefore, based on the above table, it was submitted that the Respondent had neither benefited from the additional ITC not had there been any reduction of rate of output tax in the post period. Therefore, the provisions of section 171 of the Central goods and service Act did not appear to be attracted to the present case of Respondent and accordingly the penalty U/s 171(3A) of CGST r.w.r 133 (3)(d) of CGST Rules was not attracted to the Respondent.

4. Since, the quorum of the Authority of minimum three Members, as provided under Rule 134 was not available till 23.02.2022, the matter was not decided. With the joining of two new Technical Members in

February 2022, the quorum of the Authority was restored from 23.2.2022, and a copy of the above submissions dated 14.07.2021 filed by the Respondent was supplied to the DGAP for supplementary Report under Rule 133(2A) of the CGST Rules, 2017. The DGAP filed his clarifications dated 07.04.2022 on the Respondent's submissions and, *inter-alia* clarified: -

A: The Applicant No. 1 had booked the flat during the post-GST period i.e., on 16th Nov, 2018 and during the such period there was no any change in the rate of GST and hence the provisions of section 171 of GST Act does not apply in this case.

The DGAP had investigated the matter of additional benefit of ITC in respect of project which was launched before implementation of GST (pre-GST era) and continued in GST regime. This was done so because in the erstwhile tax regime (pre-GST), various taxes and cases 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 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 input tax credit 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. Therefore, in the cases where projects were launched pre-GST regime, the prices of the flats/units/home 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, however, in all such case, 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 all the recipients by way of commensurate reduction in price, in terms of Section 171 of CGST Act, 2017.

Therefore, the averment made by the Respondent was incorrect. As stated above, the Respondent had been benefitted with additional ITC only after introduction of the GST. This additional benefit of ITC pertains to the entire project or in other words relates to each flat/unit of the project of the Respondent. Hence all unit/flat buyers were eligible to get his due benefit of ITC from the Respondent irrespective of his bookings made in pre-GST or post-GST period. Whatever was the negotiated price, the benefit of additional ITC had to be specifically passed on to all the recipients by the Respondent. This benefit had to be passed on over and above any other kind of negotiations made with the homebuyers. However, 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 input tax credit 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 it mentions "benefit of input tax credit shall be passed on to the recipient" which does not mean that the benefit of input tax credit was to be restricted to the customers/home buyers of pre-GST regime. Therefore, under Section 171, the Authority had been mandated to ensure that the benefit which was a sacrifice of precious revenue from the stake of Central and State Governments was passed on to the recipients. The soul of this provision was the welfare of the consumers who was voiceless, unorganised and scattered. Further, under the provisions of Section 171 of the CGST Act, 2017, each and every recipient/customer was entitled to receive the due benefit of input tax credit from the supplier, therefore, the recipients/customers who booked the units in post GST period was also equally eligible for the benefit of ITC.

Furthermore, in the cases of benefit of Input Tax Credit in GST regime, in pre and post GST regimes, the availability ITC had to be examined and compared. Without doing so, it would not serve the intent of the Statute Therefore, the practice of comparing pre and post GST prices and ITC availability was justified and correct. Further, as stated above that every recipient/customer was entitled to receive the due benefit of input tax credit from the supplier.

Thus, under the provisions of Section 171 of the CGST Act, 2017, each and every recipient/customer was entitled to receive the due benefit of input tax credit from the supplier, therefore, the recipients/customers who booked the units in post GST period was also equally eligible for the benefit of ITC.

B: No reduction in output rate of GST either from the pre-GST period to post-GST period or during the post-GST period to till date, hence the provisions of section 171 of CGST Act does not apply in this case.

It was not a case of reduction in the rate of tax. It was a case of accrual of additional benefit of ITC on account of introduction of GST. Further, 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 input tax credit 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 it mentions "benefit of input tax credit shall be passed on to the recipient which does not mean that the benefit of input tax credit was to restricted to the customers/home buyers of pre-GST regime.

The Respondent had referred to effective tax rates pre-GST and post-GST and argued that there was no drop in the tax rates in the case of real estate sector in the rate of Output tax (GST). This was neither relevant nor a suitable parameter to workout benefit of additional ITC. In the investigation, the quantum of relevant credit available during the pre and post GST periods was taken on the

basis of submission of the Respondent for working out additional benefit of ITC to the Respondent. Furthermore, in the cases of benefit of Input Tax Credit in GST regime, in pre and post GST regimes, the availability ITC had to be examined and compared. Without doing so, it would not serve the intent of the Statute. Therefore, the practice of comparing pre and post GST prices and ITC availability was justified and correct. Further, as stated above that every recipient/customer was entitled to receive the due benefit of input tax credit from the supplier.

C: The proposed Anti-Profiteering of additional benefit input tax credit as arrived by the DGAP was need to be revised as the DGAP was required to consider certain items as detailed below in Table-A of calculating ratio of ITC to the turnover and hence, to the extent of such ignored/resubmitted items the alleged additional benefit of input tax credit need to be revised.

In the report dated 25.02.2021, the total area of pre-GST and post-GST periods had been taken from the home buyers' list furnished by the Respondent during the course of investigation. In the pre-GST period, the total area reflected in the home buyers' list was 93,590 and in the post-GST period, it was 4,77,645 (copies of screenshots enclosed). What the Respondent had submitted now was different from what was submitted during the course of investigation. Therefore, the contention of the Respondent regarding the said total area cannot be considered.

Further, in the home buyers' list the total turnover during the post-GST period was reflected as Rs. 183,96,55,636/- and not Rs. 183,97,15,637/- as claimed by the Respondent now. The pending receivable of Rs. 25,85,21,624/- stated to had been ignored during investigation was nowhere reflected in the submissions/data furnished by the Respondent during the course of investigation (copies of screenshots of pre and post GST turnover enclosed).

As far as WCT credit was concerned, it was submitted that in the Details of Output and Input Tax Statement for the period April,

2016 to April, 2020, furnished by the Respondent during investigation reflected figures of Service Tax and GST but did not reflect any credit on account of WCT (copy of summary enclosed). Moreover, in para 13 of the Report dated 25.02.2021, it had been mentioned that -

> *"The Respondent were not eligible to avail Input Tax Credit of VAT paid on Inputs as he had opted for composition scheme in the VAT regime."*

Therefore, the WCT credit was not considered in the investigation Report, and accordingly, the profiteering calculated by the Respondent taking his revised figures, which were not submitted during the course of investigation, was not acceptable.

D: Application of anti-profiteering provisions to the customers who made the booking during the post-GST period was not correct and not justifiable as per the provisions of GST Act.

The DGAP had investigated the matter of additional benefit of ITC in respect of project which was launched before implementation of GST (pre-GST era) and continued in GST regime. This was done so because in the erstwhile tax regime (pre-GST), various taxes and cases 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 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 input tax credit 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. Therefore, in the cases where projects were launched pre-GST regime, the prices of the flats/units/home 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, however, in all such case, 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 all the recipients by way of commensurate reduction in price, in terms of Section 171 of CGST Act, 2017.

Therefore, the averment made by the Respondent was incorrect. As stated above, the Respondent had been benefitted with additional ITC only after introduction of the GST. This additional benefit of ITC pertains to the entire project or in other words relates to each flat/unit of the project of the Respondent. Hence all unit/flat buyers were eligible to get his due benefit of ITC from the Respondent irrespective of his bookings made in pre-GST or post-GST period. Whatever was the negotiated price, the benefit of additional ITC had to be specifically passed on to all the recipients by the Respondent. This benefit had to be passed on over and above any other kind of negotiations made with the homebuyers.

However, 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 input tax credit 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 it mentions "benefit of input tax credit shall be passed on to the recipient" which does not mean that the benefit of input tax credit was to be restricted to the customers/home buyers of pre-GST regime. Therefore, under Section 171, the Authority had been mandated to ensure that the benefit which was a sacrifice of precious revenue from the stake

of Central and State Governments was passed on to the recipients. The soul of this provision was the welfare of the consumers who was voiceless, unorganised and scattered. Further, under the provisions of Section 171 of the CGST Act, 2017, each and every recipient/customer was entitled to receive the due benefit of input tax credit from the supplier, therefore, the recipients/customers who booked the units in post GST period was also equally eligible for the benefit of ITC.

Furthermore, in the cases of benefit of Input Tax Credit in GST regime, in pre and post GST regimes, the availability ITC had to be examined and compared. Without doing so, it would not serve the intent of the Statute. Therefore, the practice of comparing pre and post GST prices and ITC availability was justified and correct. Further, as stated above that every was entitled to receive the due benefit of ITC from the supplier.

Thus, under the provisions of Section 171 of the CGST Act, 2017, each and every recipient/customer was entitled to receive the due benefit of input tax credit from the supplier; therefore, the recipients/customers who booked the units in post GST period was also equally eligible for the benefit of ITC.

The case of M/s DRA Aadithya Projects Pvt Ltd. had not attained finality as the order passed by the Hon'ble Delhi High Court was interim.

E: The Anti-profiteering provisions do not apply in this case merely on account of home buyer price change during post-GST period as the Respondent incurred additional costs that leads to increased cost of development of project.

The contention of the Respondent was not correct. Input tax credit was available on the inputs (goods and services) purchased/used in the project, which was cost to the Respondent. Hence, when ITC was being considered in the investigation, then, it implies that the cost to the Respondent had been considered as far as ITC was concerned.

The main factor under consideration for the sake of profiteering was that there should not be any increase in the base price of sold-out flats to obviate passing of benefit of additional ITC. In other words, there should be commensurate reduction in prices of the sold-out flats. The factors like capital expenditure cost incurred to the company, substantial increase in cost, land clearances, inter departmental clearances, delay in disbursement of funds, covid-19 etc. was not factored in while calculating profiteering in terms of Section 171 of the CGST Act, 2017.

F: The anti-profiteering provisions and the constitution of Authority under Rule 122 was unconstitutional.

The Parliament as well as all the State Legislature had delegated the task of framing of the Authority and the 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 101st Amendment of the Constitution, as per Rule 127 and 133 of the CGST Rules, 2017. Further, the power to determine his own Methodology & Procedure had been delegated to this Authority under Rule 136 of the above Rules as per the provisions of Section 164 of the above Act as such power was generally and widely available to all the judicial, quasi-judicial and statutory authorities to carry out his functions and duties The above delegation had been granted to this Authority after careful consideration at several levels and therefore, there was no ground for claiming that the present delegation was excessive. Since the functions and powers to be exercised by this Authority had been approved by competent bodies, the same was legal and binding on the Respondent.

The Authority in exercise of power delegated to it under the Rule 126 had notified the Methodology and Procedure vide Notification dated 28.03.2018 which was also available on his website. However, it was submitted that no fixed/uniform mathematical methodology could be determined as the facts of each case differ. Therefore, the determination of the profiteered amount had to be done by taking into account particular facts of each case.

Further, the case reference quoted by the Respondent in the matter of M/s Samsung India Electronics Pvt. Ltd. vs. Union of India was still sub-judice before Hon'ble Delhi High Court so the contentions of the Respondent regarding constitutional validity of Authority was erroneous. Other cases cited by the Respondent had also not been finalized by the Hon'ble High Court.

5. Copy of the above clarifications dated 07.04.2022 was supplied to the Respondent to file his re-joinder. Further, personal hearing in the matter was held on 08.08.2022, wherein, the Respondent had re-iterated his written submissions. The Respondent also filed his additional submissions vide his email dated 08.08.2022, wherein, he has inter-alia submitted as under : -

The DGAP stated that the Respondent was not eligible to avail Input Tax Credit of VAT paid on Inputs as they have opted for composition scheme in the VAT regime. Therefore, the WCT credit was not considered in the Investigation Report. In respect of VAT/ WCT credit under Karnataka Value Added Tax Act, both under composition and non-composition scheme, and where the execution of work is sub-contracted by main-contractor to the sub-contractor on back to back basis, then whenever the sub-contractor paid VAT/WCT on his turnover, the main-contractor is eligible to avail the credit of such VAT/ WCT credit in the form of deduction of such sub-contract's turnover from his taxable turnover and vice versa. Hence, the Respondent is eligible to avail the credit of VAT/ WCT being such credit is allowable to main-contractor in the form

deduction of turnover (on which VAT/WCT tax was paid by the sub-contractor) from his taxable turnover.

Further, in respect of VAT/ WCT credit under Karnataka Value Added Tax Act, both under composition and non-composition scheme, whenever the sub-contractor paid WCT on his turnover, the main-contractor is eligible to avail deduction of turnover and WCT paid to sub-contractor from his turnover and vice versa. Hence, with regard to turnover and WCT paid to sub-contractor the Respondent is eligible to avail the deduction of turnover and WCT tax paid to the sub-contractor as such WCT tax was paid by the sub-contractor to the Karnataka VAT department. Accordingly, the turnover declared by the Respondent in the VAT returns/assessment orders for the period ending 30th June,2017 is Rs.61,11,68,770/- which includes the WCT paid by the sub-contractor @ 5% amounting to Rs.2,91,03,274/- for the which the Respondent (as main-contractor) is entitled for WCT credit as per the provisions of Karnataka VAT Act. Further, the Respondent has been assessed under Karnataka VAT Act and wherein the authority allowed the sub-contractor's turnover amounting Rs.58,20,65,496/- and the WCT tax of Rs.2,91,03,274/- totaling to Rs.61,11,68,770/- i.e. deduction of turnover including WCT tax which the sub-contractor had paid to VAT department was allowed as deduction from total turnover amounting to Rs.61,11,68,770/- and the same is verifiable from the said assessment orders. The details of relevant clause under Karnataka Value added Tax Act and copy of assessment orders had been provided immediate reference. Hence, it was requested to consider the said WCT tax credit (which was allowed in the assessment orders) for the pre-GST period in calculating ratio of pre-GST ITC to the turnover (pre-GST). Copies of sub-contractor bills containing the details turnover and WCT/VAT tax paid thereon to sub-contractor along with copies of VAT assessment orders of Respondent wherein the VAT department allowed the deduction to the Respondent both turnover and WCT tax paid to sub-contractor.

Further, as far as claim of deduction of sub-contractor turnover and WCT tax paid to such sub-contractor is concerned, the Respondent

submitted that in the details of Output and Input Tax Statement for the period April 2016 to April 2020, furnished during investigation proceedings the Respondent provided and reflected figures of Service Tax and GST and also reflected the VAT turnover in the place of credit on account of WCT because under VAT provisions relating to Works contractors whenever the main-contractor (Respondent) gives work execution to a sub-contractor on back to back basis, then being such sub-contractor was paid the VAT on such back to back turnover, the main-contractor is entitled to take WCT credit in form of deduction of such back to back turnover from the taxable turnover of main-contractor.

It was submitted that as per the master sheet of home buyers list the total area of both pre-GST and post-GST period's home buyer bookings are 1,71,575 Sft. and 4,63,165 Sft. respectively only. However, in Table-A the DGAP while arriving the Ratio of post-GST Input Tax Credit to turnover (post-GST) has considered the area of pre-GST and post-GST period's home buyer bookings as 93,825 Sft. and 4,77,645 Sft. instead of 1,71,575 Sft. and 4,63,165 Sft. respectively. Hence, it is requested that the authority to consider area of both pre-GST and post-GST period's home buyer bookings as 1,71,575 Sft. and 4,64,165 Sft. respectively.

Further, it was submitted that in respect of turnover as per Home buyers list towards demand raised of Rs.209,82,37,261/- during post-GST period, the DGAP, while calculating the Ratio of post-GST Input Tax Credit to the turnover (post-GST), has considered only the amount received of Rs.183,97,15,637/- against total demand raised (from all the customers who booked the flats upto April,2020) and hence ignored to consider the pending/receivable of Rs. Rs.17,14,83,699/- against said demand. Accordingly, having ignored to consider the pending/receivable of Rs.17,14,83,699/-against said demand it is resulted in higher side ratio of post-GST input tax credit to the turnover (post-GST) which is not correct and not justifiable under the GST provisions. Therefore, for the purpose of computing the relevant ITC in Table -A, the DGAP is required to consider the said pending/receivables of Rs. Rs.17,14,83,699/-against demand

raised. Hence, with regard to demand raised on home-buyers and payable to the Respondent amounting to Rs.17,14,83,699/- the DGAP ignored to take into consideration form the home-buyers provided during investigation proceedings. Accordingly, it was requested to consider the submission and give proper direction to DGAP as deem fit in accordance with law.

6. We have carefully considered the Report furnished by the DGAP, the clarifications filed by him and the records of the case including the submissions made during the personal hearing. In view of the above said facts and the records, the Authority is required to give its decision in respect of following issues: -

   a. Whether the Respondent has passed on the commensurate benefit of reduction of GST to its recipient after issuance of the above said in terms of Section 171 of the CGST Act, 2017? If not, the Authority is mandated to determine the profiteered amount in terms of the said section along with the relevant rules made thereunder?
   b. Whether DGAP has calculated the profiteered amount by adopting appropriate methodology and has addressed various issues raised by Respondent during the proceedings?
   c. Whether Respondent is liable for penalty for its failure to pass on the commensurate benefit to its recipients?

7. The Authority finds that the DGAP has collected all relevant data and information including documents from the Respondent and have carried out in-depth investigation. After going through the DGAP's investigation report, its annexures & calculations, the Respondent's submissions and the other facts on record, the Authority observes that: -

   (i) The Respondent has contended that the total turn-over during the post-GST period was reflected as Rs. 1,83,96,55,636/- instead of Rs. 1,83,97,15,637/- and pending receivables of Rs. 17,14,83,699/- was ignored. In response to the same, the DGAP has clarified that during the course of investigation this data was not furnished by the Respondent.

(ii) The Respondent has contended that as per Section 15(5)(b) read with Rule 3(2) of the Karnataka VAT Act, in respect of VAT/WCT credit under Karnataka VAT Act, both under composition and non-composition scheme, and where, the execution of work is sub-contracted by main contractor to the sub-contractor on back to back basis, then whenever the sub-contractor paid VAT/WCT on his turnover, the main contractor is eligible to avail deduction of turnover and WCT paid to sub-contractor from his turnover and vice versa. The said claim of the Respondent needs to be examined with respect the relevant law after verification of the assessment orders from the State GST/ VAT authorities.

(iii) The Respondent has claimed that as per the master sheet of home buyers list the total area of both pre-GST and post-GST period's home buyer bookings are 1,71,575 Sft. and 4,63,165 Sft. respectively only. However, in Table-A the DGAP while arriving the Ratio of post-GST Input Tax Credit to turnover (post-GST) has considered the area of pre-GST and post-GST periods' home buyer bookings as 93,825 Sft. and 4,77,645 Sft. instead of 1,71,575 Sft. and 4,63,165 Sft. respectively. This claim of the Respondent needs to be examined from the documents already submitted.

8. Hence, in view of the above facts and observations, the Authority, without going into the merits of the case, directs the DGAP to re-examine/ re-investigate and recalculate the amount of profiteering under Rule 133(4) of the CGST Rules, 2017 strictly in respect of the findings made in para 7(i) to 7(iii) above and submit its Report within 3 months of this order.

9. Further, the Hon'ble High Court of Delhi, vide its Order dated 10.02.2020 in the case of Nestle India Ltd. & Anr. Vs. Union of India has held that: -

"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."

10. A copy of this order be supplied free of cost to all the Applicants, the Respondent and the concerned Central and State GST Commissioners and the file of the case be consigned after completion.

Sd/-
(Amand Shah)
Technical Member &
Chairman

Sd/-
(Pramod Kumar Singh)
Technical Member

Sd/-
(Hitesh Shah)
Technical Member

Certified Copy

30.9.22

(Rajarshi Kumar)
Secretary, NAA

National Anti-profiteering Authority
NAA
Dept. of Revenue
Ministry of Finance
Govt. of India
राष्ट्रीय मुनाफाखोरी-रोधी प्राधिकरण

F. No. 22011/NAA/45/Bollineni Developers/2021 Dated:30.09.2022

Copy To:-

1. M/s Bollineni Developers Ltd., No. 23, Old 5, 3rd Floor, Sankey Square, Sankey Road, Lower Palace Orchards, Sadshiva Nagar, Bengaluru – 560003.
2. Sh. Vinod E, J Block, Flat No. 703, Bollineni Silas, Sdarmangala Village, Near National Public School, Whitefield, KR Puram, Hobli, Bengaluru - 560067.
3. Directorate General of Anti-Profiteering, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, New Delhi-110001.
4. Guard File.