

BEFORE THE NATIONAL ANTI-PROFITEERING AUTHORITY

UNDER THE CENTRAL GOODS & SERVICES TAX ACT, 2017

Case No. 57/2022

Date of Institution: 29.10.2020

Date of Order: 05.08.2022

In the matter of:

1. Sh. Hasmukh Daftary, B-404, Florentine, Hiranandani Gardens, Powai, Mumbai-400076.
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 K D Lite Developers Pvt. Ltd., 1st Floor, Plot No. 273, Near Big Bazaar, Senapati Bapat Road, Matunga Road West, Mumbai-400016.

Respondent

Quorum:-

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

Present:

1. None for Applicant No 1.
2. Sh. Parikshit Sharma, Director, Sh. Vivek Das, Sh. Madhu Sudan Sharma, CA for the Respondent

ORDER

1. The present Report dated 28.10.2020 has been received from Applicant No 2. i.e. the Director General of Anti-Profiteering (DGAP) after a detailed investigation under Rule 129 (6) of the Central Goods & Service Tax (CGST) Rules, 2017. The brief facts of the present case are that Applicant No. 1 had filed an Application before the Standing Committee stating that the

Respondent had not passed on the benefit of ITC to him by way of commensurate reduction in the price of Flat No. C-1004 purchased from the Respondent in the Respondent's project "Ruparel Orion", situated at Chembur, Mumbai on the introduction of GST w.e.f. 01.07.2017, in terms of Section 171 of the Central Goods and Services Tax Act, 2017.


2. The DGAP in its report dated 28.10.2020, inter-alia, has stated that:-
 - i. The Standing Committee on Anti-profiteering examined the application filed by Applicant No. 1 in its meeting held on 10.01.2020, the minutes of which were received by DGAP on 24.01.2020, whereby it was decided to forward the same to the DGAP office to conduct a detailed investigation in the matter. Accordingly, the investigation was initiated to collect the evidence necessary to determine whether the benefit of the Input Tax Credit had been passed on by the Respondent to Applicant No. 1 in respect of the construction service supplied by the Respondent.
 - ii. After receipt of the reference from the Standing Committee on Anti-profiteering, a Notice under Rule 129(3) of the Rules was issued by the Director General of Anti-profiteering on 28.01.2020, calling upon the Respondent to reply as to whether he admitted that the benefit of ITC had not been passed on to the above Applicant 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 documents in support. The Respondent was also allowed to inspect the relied upon non-confidential evidence/information furnished by Applicant No. 1 during the period 04.02.2020 to 07.02.2020. However, the Respondent did not avail of

this opportunity. The above Applicant was allowed to inspect the non-confidential documents/reply furnished by the Respondent between 10.08.2020 and 12.08.2020 which was not availed by Applicant No. 1. vide email dated 30.09.2020 was once again requested to inspect the non-confidential documents on any working day between 01.10.2020 to 07.10.2020. He was also requested to inform whether he had requested for cancellation of his allotment of flat to the Respondent. Applicant No. 1 vide e-mails dated 30.09.2020 and 01.10.2020 informed that he had never requested for cancellation of the flat and he along with his wife was the owner of the flat as of date hence, the contention of the Respondent was incorrect.

- iii. The period covered by the current investigation was from 01.07.2017 to 31.12.2019.
- iv. The time limit to complete the investigation was up to 24.07.2020. However, in terms of Notification No. 35/2020-Central Tax dated 03.04.2020 vide which where it was provided that, any time limit for completion/furnishing of any report, had been specified in, or prescribed or notified under the Central Goods and Service Act,2017 which falls during the period from the 20th day of March 2020 to the 29th day of June 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 30.06.2020. Further, vide Notification No. 55/2020-Central Tax dated 27.06.2020 and by Notification No.65/2020- Central Tax dated 01.09.2020 the time limit for compliance was extended up to 30.11.2020. The National Anti-Profiteering Authority, vide its order

dated 26.08.2020, in terms of Rule 129(6) of the Rules allowed a further extension of three months. Accordingly, the time limit to complete the investigation stands extended up to 28.02.2021.

- v. In response to the Notice dated 28.01.2020, the Respondent submitted his reply vide letters and e-mails dated 11.02.2020, 03.07.2020, 24.07.2020, 28.07.2020, 30.07.2020, 31.07.2020, 05.08.2020 and 15.10.2020. The detailed submissions of the Respondent to the DGAP have been summed up below wherein, inter-alia, it was stated that:-
- a. He had already informed his customers in writing that the GST benefit would be passed upon completion of the project.
 - b. Applicant No. 1 had booked his flat in the year 2012-13 i.e. on 23.05.2012 and the Respondent had received around 40% of the payment in the service tax regime and the Service Tax was duly paid into the government treasury during that period.
 - c. The Respondent had also sent a letter to the above Applicant and informed him that GST benefit shall be passed on to him upon completion of the project.
 - d. Applicant No. 1 had then requested for cancellation of his said booking vide email dated 21.01.2020 and the same had been duly accepted by him. Process of cancellation, at the instance of Applicant No. 1, would be completed in due course.
- vi. Vide the aforementioned letters, the Respondent had submitted the following documents/information:
- (a) Copies of GSTR-1 Returns for the period July 2017 to December 2019.

- (b) Copies of GSTR-3B Returns for the period July 2017 to December 2019.
 - (c) Electronic Credit Ledger for the period July 2017 to December 2017.
 - (d) Copies of VAT returns (including all annexures) for the period April 2016 to June 2017.
 - (e) Copies of all demand letters issued and sale agreement made with the Applicant.
 - (f) Copy of Balance Sheet for FY 2016-17, 2017-18 & 2018-19.
 - (g) 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 December 2019 for the project "Ruparel Orion".
 - (h) Cenvat/Input Tax Credit Register for the Financial Year 2016-17, 2017-18, 2018-19, and for the period April 2019 to November 2019.
 - (i) List of home buyers in the project "Ruparel Orion" along with details of the benefit passed on.
 - (j) Service tax payment challans for the period April 2016 to June 2017.
 - (k) Details of the project report submitted to RERA including all periodic progress submitted till December 2019.
 - (l) GSTR-9 & 9C for the F.Y. 2017-18.
 - (m) Details of Applicable tax rates, Pre-GST and Post-GST. 
- vii. Vide the Notice dated 28.01.2020, the Respondent was informed that if any information/documents were provided on a confidential basis,

in terms of Rule 130 of the Rules, a non-confidential summary of such information/documents was required to be furnished. The Respondent, vide letter dated informed that the confidential details were as follows-

- (a) GST Returns,
- (b) GST Electronic Ledger
- (c) VAT Returns
- (d) CENVAT and ITC Registers
- (e) List of Home Buyers.

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

- a. Whether there was the benefit of reduction in the rate of tax or ITC on the supply of construction service by the Respondent after implementation of GST w.e.f. 01.07.2017 and if so,
- b. Whether the Respondent passed on such benefit to the recipients by way of commensurate reduction in price, in terms of Section 171 of the Central Goods and Services Tax Act, 2017.

ix. Another relevant point in this regard was para 5 of Schedule III of the Central Goods and Services Tax 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 Central Goods and Services Tax

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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 the completion certificate, where required, by the competent authority or after his first occupation, whichever was earlier”. Thus, the ITC on the residential units which were under construction but not sold was provisional ITC which may 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 Central Goods and Services Tax 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 may 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 on 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 proportionate benefit of additional ITC available to him post-GST.

- x. After the issuance of the Notice of Initiation of Investigation, the Respondent did not submit the documents required for the investigation on the due date. Hence several reminder letters were issued but the Respondent did not submit the documents. As the investigation of Anti-profiteering was time bound, Summons dated 17.07.2020 under Section 70 of the CGST Act, 2017, to submit the documents, had to be issued. The Respondent submitted the relevant documents subsequently.
- xi. The Respondent vide letter dated 03.07.2020 submitted copies of demand letters issued to the above Applicant. The details of the schedule of payment in the installment plan was furnished in Table-A below.

Table- 'A'

Sr. No.	Particulars	%	Amount
1	Paid on booking of the Flat/Premises	10.00%	6,94,200/-
2	Paid on Execution of Agreement of the said flat/premises	20.00%	13,88,400/-
3	Paid on completion of Plinth of the building in which the said premises was situated	15.00%	10,41,300/-
4	Paid on the casting of the 1 st Slab of the building in which the said premises was situated	2.00%	1,38,840/-
5	Paid on the casting of the 2 nd slab of the building in which the said premises was situated	2.00%	1,38,840/-
6	Paid on the casting of the 3 rd slab of the building in which the said premises was situated	2.00%	1,38,840/-
7	Paid on the casting of the 4 th slab of the building in which the said premises was situated	2.00%	1,38,840/-
8	Paid on the casting of the 5 th slab of the building in which the said premises was situated	2.00%	1,38,840/-
9	Paid on the casting of the 6 th slab of the building in which the said premises was	2.00%	1,38,840/-

	situated		
10	Paid on the casting of the 7 th slab of the building in which the said premises was situated	2.00%	1,38,840/-
11	Paid on the casting of the 8 th slab of the building in which the said premises was situated	2.00%	1,38,840/-
12	Paid on the casting of the 9 th slab of the building in which the said premises was situated	2.00%	1,38,840/-
13	Paid on the casting of the 10 th slab of the building in which the said premises was situated	1.00%	69,420/-
14	Paid on the casting of the 11 th slab of the building in which the said premises was situated	1.00%	69,420/-
15	Paid on the casting of the 12 th slab of the building in which the said premises was situated	1.00%	69,420/-
16	Paid on the casting of the 13 th slab of the building in which the said premises was situated	1.00%	69,420/-
17	Paid on the casting of the 14 th slab of the building in which the said premises was situated	1.00%	69,420/-
18	Paid on the casting of the 15 th slab of the building in which the said premises was situated	1.00%	69,420/-
19	Paid on the casting of the 16 th slab of the building in which the said premises was situated	1.00%	69,420/-
20	Paid on completion of Brickwork of your apartment in which the said premises was situated	1.00%	69,420/-
21	Paid on completion of internal plastering of your apartment in which the said premises was situated	1.00%	69,420/-
22	Paid on completion of flooring of your apartment in which the said premises was situated	1.00%	69,420/-
23	Paid on completion of Doors of your apartment in which the said premises was situated	1.00%	69,420/-
24	Paid on completion of Window fittings of your apartment in which the said premises was situated	1.00%	69,420/-
25	Paid on completion of Sanitary fittings of your apartment in which the said premises was situated	1.25%	86,775/-
26	Paid on completion of Construction of Staircase of your apartment floor in which the said premises was situated	1.25%	86,775/-
27	Paid on completion of lift wells of your apartment floor in which the said premises was situated	1.25%	86,775/-
28	Paid on completion of Construction of Lobbies of your apartment floor in which the said premises was situated	1.25%	86,775/-
29	Paid on completion of External Plumbing of your apartment in which the said premises was situated	1.25%	86,775/-

30	Paid on completion of External Plastering of your apartment in which the said premises was situated	1.25%	86,775/-
31	Paid on completion of Elevation of your apartment floor in which the said premises was situated	1.25%	86,775/-
32	Paid on completion of Terrance with Water Proofing in which the said premises was situated	1.25%	86,775/-
33	Paid on completion of Installation of Lifts in which the said premises was situated	2.50%	1,73,550/-
34	Paid on completion of the installation of Water Pumps in which the said premises was situated	2.50%	1,73,550/-
35	Paid on completion of Electrical Fittings of your apartment which the said premises was situated	2.50%	1,73,550/-
36	Paid on completion of Electro, Mechanical & Environmental requirements in which the said premises was situated	2.50%	1,73,550/-
37	Balance amount payable against possession of the said premises	5.00%	3,47,100/-
Total		100%	69,42,000/-

The above table shows that the payments to be made by the Applicant were linked to the phase-wise construction of the project.

xii. The Respondent had informed that the above Applicant had requested for cancellation of his allotment but the Applicant refuted the claim of the Respondent. As the name of the above Applicant was figuring in the Homebuyers' list, profiteering in respect of the Applicant No. 1 had to be computed and the claim/information given by the Respondent had no impact on the profiteering calculation.

xiii. The Respondent also submitted a copy of the certificate issued by the Real Estate Regulatory Authority (RERA) of Maharashtra. On perusal of the complete details of the declaration made before the RERA, it was observed that the number of flats declared in the application was 203 whereas the Respondent had shown the figure as 223. Accordingly, the Respondent was asked to clarify the same vide email dated 05.10.2020. The Respondent submitted his reply vide email

dated 15.10.2020 explaining that “difference between flats was due to amendment plans in the project”. At the time of RERA Registration, the permission of project was for only 15 floors which include 203 flats, but as of now there was an amendment in Project plan for 16 floors which included 223 flats, the difference was of 20 flats was of 16th Floor”.

- xiv. As regards the allegation of profiteering, it was observed that before 01.07.2017, i.e., before the GST was introduced, the Respondent was eligible to avail credit of Service Tax paid on the input services (CENVAT credit of Central Excise Duty was not available) in respect of the flats for the project “Ruparel Orion” sold by him. The Respondent had informed that he was covered under the composite dealer scheme under Maharashtra VAT, hence credit was not availed by the Respondent. Further, post-GST, the Respondent could avail ITC of GST paid on all the inputs and input services. From the data submitted by the Respondent covering the period April 2016 to December 2019, the details of the ITC availed by him, his turnover from the project “Ruparel Orion,” the ratios of ITCs to turnovers, during the pre-GST (April 2016 to June 2017) and post-GST (July 2017 to December 2019) periods, were furnished in table-B below.



Table- 'B' (Amount in Rs.)

Sr.No	Particulars	Total (Pre-GST) April 2016 to June 2017	Total (Post GST) (July 2017 to December 2019)
1	CENVAT of Service Tax Paid on Input Services used for flats (A)	1,13,24,475	-
2	Input Tax Credit of VAT Paid on Purchase of Inputs (B)		-
3	Total CENVAT/Input Tax Credit Available (C)= (A+B)	1,13,24,475	-
4	Input Tax Credit of GST Availed (D)	-	5,82,71,633
5	Turnover for Flats as per Home Buyers List (E)	14,45,37,739	38,99,54,121
6	Total Saleable Area (in SQF) (F)	2,93,630	2,93,630
7	Total Sold Area (in SQF) relevant to turnover (G)	34,470	83,690
8	Relevant ITC [(H)= (B)*(G)/(F)]	13,29,410	1,66,08,497
The ratio of ITC Post-GST [(I)=(H)/(E)]		0.92%	4.26%

xv. From the above table-‘B’, it was clear that the ITC as a percentage of the turnover that was available to the Respondent during the pre-GST period (April 2016 to June 2017) was 0.92% and during the post-GST period (July 2017 to December 2019) it was 4.26% in Project “Ruparel Orion”. This confirms that post-GST, the Respondent had benefited from additional ITC to the tune of 3.34% [4.26% (-) 0.92%] of the turnover.

xvi. It was observed that the Central Government, on the recommendation of the GST Council, had levied 18% GST (effective rate was 12% because 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, based on the figures contained in Table- ‘B’ above, the comparative figures of the ratios of ITCs availed/available to the turnovers in the pre-GST and post-GST periods as well as the turnovers, the recalibrated base price, and the excess realization (profiteering) during the post-GST period, was tabulated in table-C below.

Table-C

Sr. No.	Particulars		
1	Period	A	July 2017 to December 2019
2	Output GST rate (%)	B	12
3	The ratio of CENVAT credit/ ITC to Total Turnover as per table - 'B' above (%)	C	4.26%/0.92%
4	An increase in ITC availed post-GST (%)	D= 4.26% less 0.92%	3.34%
5	<u>Analysis of Increase in input tax credit:</u>		
6	Base Price raised from July 2017 to December 2019 (Rs.)	E	38,99,54,121
7	GST raised over Base Price (Rs.)	F= E*B	4,67,94,495
8	Total Demand raised	G=E+F	43,67,48,616
9	Recalibrated Base Price	H= E*(1-D) or 96.66% of E	37,69,29,653
10	GST @12%	I = H* B	4,52,31,558
11	Commensurate demand price	J = H+I	42,21,61,212
12	Excess Collection of Demand or Profiteering Amount	K= G-J	1,45,87,404

From the above table-‘C’, it was observed that the additional ITC of 3.34% of the turnover should have resulted in the commensurate reduction in the base prices as well as cum-tax prices. Therefore, in terms of Section 171 of the Central Goods and Services Tax Act, 2017, the benefit of such additional ITC was required to be passed on to the recipients.

- xvii. It was evident from the above calculation explained in Table C based on the aforesaid CENVAT/input tax credit availability pre and post-GST and the details of the amount collected by the Respondent from Applicant No. 1 in respect of the flats sold by the Respondent during the period 01.07.2017 to 31.12.2019, the benefit of ITC that needs to be passed on by the Respondent to the buyers of flats comes to Rs. 1,45,87,404/- which included 12% GST on the base amount of Rs. 1,30,24,468/-. The homebuyer and unit-wise break-up of this amount

was given in Annex-17 of the DGAP's report. This amount was inclusive of the profiteered amount of Rs 86,215/- (including GST) which was the profiteered amount in respect of Applicant No. 1 mentioned at serial no. 58 of Annex-17 of the report.

xviii. From the above discussion, it appears that the benefit of additional ITC input tax credit of 3.34% of the taxable turnover has accrued to the Respondent and the same was required to be passed on to the above Applicant and other recipients. The provision of Section 171 of the Central Goods and Services Tax Act, 2017 had been contravened by the Respondent since the additional benefit of ITC @3.34% of the base price received by the Respondent during the period 01.07.2017 to 31.12.2019, had not been passed on to the Applicant No. 1 and 87 other recipients. On this account, it appears that the Respondent had realized an additional amount to the tune of Rs.1,45,87,404/- (including GST) which was inclusive of the profiteered amount of Rs. 86,215/- (including GST) in respect of the above Applicant. Further, the investigation reveals that the Respondent had also realized an additional amount of Rs. 1,45,01,189/- as mentioned in Annex-15 which included both the profiteered amount @3.34% of the taxable amount (base price) and GST on the said profiteered amount from 87 other recipients who were not Applicants in the present proceedings. The recipients were identifiable as per the documents on record as the Respondent has provided their names and addresses along with unit no. allotted to them. Further, it was observed that the Respondent had supplied construction services in the State of Maharashtra only.

xix. The present investigation covers the period from 01.07.2017 to 31.12.2019. Profiteering, if any, for the period post-December, 2019, had not been examined as the exact quantum of ITC that will be available to the Respondent in the future cannot be determined at this stage, when the construction of the project was yet to be completed.

3. A copy of the investigation report dated 28.10.2020 was provided to the Respondent and Applicant No. 1 as per the Minutes of the Meeting of Authority held on 03.11.2020 and as conveyed vide notice dated 05.11.2022. The Respondent vide letter dated 19.11.2020 submitted his written submission. However, Applicant No. 1 did not submit any submissions against the DGAP's report. The detailed submissions of the Respondent to the Authority have been summed up below wherein, inter-alia, it was stated that:-

i. There seemed to be many mistakes in DGAP's report dated 28.10.2020 of the DGAP. In this report anti-profiteering amount of Rs. 1,45,87,404/- has been arrived which was not correct. This should be Rs. 8,43,443/- only. For the veracity of the above statement the reworking of the profited amount and a comparative statement along with a point-wise detailed explanation was enclosed by the Respondent as is given below:-

S.No.	Particulars	Calculations as per DGAP Report		Correct Reworking	
		Total Pre-GST) April 2016 to June 2017	Total (Post GST) July 2017 to December 2019	Total Pre-GST) April 2016 to June 2017	Total (Post GST) July 2017 to December 2019
1	Cenvat of Service Tax Paid on Input Services used for Flats (A)	1,13,24,475/-		48,86,542/-	
2	Input Tax Credit of VAT Paid on Purchase of Inputs (B)				
3	Total CENVAT/Input Tax Credit Available (C) = (A+B)	1,13,24,475/-	--	48,86,542	

4	Input Tax Credit of GST Availed (D)		5,82,71,633		5,82,74,633
5	Turnover for flats as per Home buyers List (E)	14,45,37,739	38,99,54,121	14,45,37,739	38,99,54,121
6	Total Saleable area (In SQF) (F)	2,93,630	2,93,630	2,93,630	2,93,630
7	Total Sold area (In SQF) Relevant to the turnover (G)	34,470	83,690	82,550	22,470
8	Relevant ITC [(H)= (B)*(G)/(F)]	13,29,410	1,66,08,497	13,73,783	44,59,459
	The ratio of Input Tax Credit Post-GST [(I)=(H)/(E)]	0.92%	4.26%	0.95%	1.14%

ii. The Respondent further submitted that:-

- a) The CENVAT Credit taken during Service Tax Period as per data previously by him was Rs. 1,04,22,099/- (Including opening CENVAT Credit of Rs. 55,35,557/-) therefore CENVAT Credit from April 2016 to June 2017 is Rs. 48,86,542/- against Turnover of Rs. 14,45,37,739/- as per the list of home buyers.
- b) There was a difference of Rs. 3000/- in GST Credit taken in the calculation of the department. The actual GST Credit taken was Rs. 5,82,74,633/- instead of Rs. 5,82,71,633/- taken by the DGAP.
- c) The total sold area (in SQF) during the period was 1,05,020 SQF (82,550 Pre-GST and 22,470 SQF Post-GST) as per the list of the homebuyers submitted but the area taken by the DGAP for the calculation was 1,18,160 SQF (34,470 SQF Pre-GST and 83,690 SQF post-GST).

d) Due to the above difference, there are also some differences in Relevant ITC and the Ratio of ITC.

e) Hence, the correct calculation might be as shown in the table below:-

S.No.	Particulars		As per the DGAP Calculation	As per the Respondent's Calculation
1	Period	A	July 2017 to December 2019	July 2017 to December 2019
2	Output GST Rate (%)	B	12	12
3	The ratio of CENVAT Credit/Input Tax Credit to Total Turnover as per the Above Table (%)	C	4.26%/0.92%	1.14%/0.95%
4.	Increase in Input Tax Credit availed Post-GST (%)	D=(4.26-0.92)% or (1.14-0.95) %	3.34%	0.19%
5	Analysis of Increase in Input Tax Credit :			
6	Base Price Raised from July 2017 to December 2019	E	38,99,54,121	38,99,54,121
7	GST raised over Base Price	F=E*B	4,67,94,495	4,67,94,495
8	Total Demand Raised	G=E+F	43,67,48,616	43,67,48,616
9	Recalibrated Base Price	H=E*(I-D)	37,69,29,653	38,92,01,047
10	GST @12%	I=H*B	4,52,31,558	4,67,04,126
11	Commensurate Demand Price	J=H+I	42,21,61,212	43,59,05,153
12	Excess Collection of demand or Profiteering Amount	K= G-J	1,45,87,404	8,43,443

Due to the difference in the calculation of the Relevant ITC, there was a change (Increase) in ITC availed Post-GST. As per the DGAP's report increase in the ITC is 3.34% whereas, after recalculation with correct figures, the increase in ITC is 0.19%, due to excess collection of demand or Profiteering amount decreases from Rs. 1,45,87,404/- to Rs. 8,43,443/-.

iii. In Para 4 of the order that "The Applicant vide e-mails dated 30.09.2020 & 01.10.2020 (Annex-3) informed that he had never requested for

cancellation of the flat...” was also false. He also enclosed the email dated 21.01.2020 sent by Applicant No. 1 regarding the cancellation notice.

- iv. There was no intention of not passing the GST benefit to the flat holders. He had issued the letters dated 13.12.2017 to his flat holders in this regard including Applicant No. 1.
 - v. NAA was also requested to kindly grant him a hearing through Video Conferencing so that he could put forth their case as well as answer the queries if any.
4. On receipt of the submissions dated 19.11.2020 of the Respondent this Authority, vide its Order dated 20.11.2020, called for clarifications thereon from the DGAP under Rule 133 (2A) of CGST Rules 2017. In response, the DGAP, vide his letter 16.12.2020, has submitted a point-wise reply to the above said submissions made by Respondent which are as below-
- a. The Respondent’s main contention was that there seemed to be many mistakes in the DGAP’s report dated 28.10.20 and that the anti-profiteering amount should be Rs. 8,43,443/- instead of Rs. 1,45,87,404. In this regard, DGAP replied that the DGAP’s report dated 28.10.2020 was based on the facts and data submitted by the Respondent vide his various submissions/ letters.
 - i. On the Perusal of the ‘Reworking of the Anti-Profiteering Amount and Comparative Statement it was observed by the DGAP that the CENVAT of Service Tax from April 2016 to June 2017 was Rs. 1,13,24,475/- as per DGAP’s report, however, the Respondent submitted his reworked figure of Rs. 48,86,542/-. The reworked figure submitted by the respondent was incorrect

because the Respondent had himself submitted vide his letter dated 31.07.2020 and table at sub-para (b) of para –II which mentioned that the Cenvat of Service tax from April 2016 to June 2017 was Rs. 1,13,24,475/-. Further, the DGAP also mentioned that the Respondent had not filed Service Tax Return from April 2016 to June 2017.

- ii. ITC of GST availed from July 2017 to December 2019 was Rs. 5,82,71,633/- as per DGAP's report, however, the Respondent submitted his reworked figure of Rs. 5,82,74,633/-. In this regard the DGAP has submitted that figure mentioned in the DGAP report has been taken from the GST returns filed by the Respondent and found to be correct.
- iii. Figures of DGAP's report and the Respondent reworked figures have no difference.
- iv. "The Total sold area (in sq. ft) relevant to turnover" referred to the area in respect to which demands have been raised or advances have been received by the Respondent. It did not mean the area of flats which were actually sold to buyers during that period. For example, if a flat was sold in the pre-GST period and the demands were raised in both pre-GST and post-GST during the period of the investigation, then it would figure at both places. Due to a wrong understanding of the Respondent on this point, the Respondent has expressed disagreement with the figures of the DGAP.



- v. The DGAP has further stated that the relevant ITC was based on the above figure, which was correctly taken in DGAP's Report.
- vi. The DGAP's report dated 28.10.2020 was based on the Methodology followed by DGAP in all its Reports till then and which had been upheld by NAA in several Orders.
5. The above said clarification of the DGAP dated 16.12.2020, was forwarded by this Authority, to the Respondent and Applicant No. 1, inviting their submissions, if any. In response, the Respondent requested 7-10 more days to submit the comments on the clarifications dated 16.12.2020. However, Applicant No. 1 did not respond to the notice dated 24.12.2020. The Authority allowed the request for the additional time made by the Respondent and accordingly, vide its order dated 08.01.2021 asked the Respondent and Applicant No. 1 to submit their consolidated replies on the matter by 21.01.2021. In Response, the Respondent has reiterated his earlier submission and requested for hearing through video conferencing for any further explanation vide his email dated 20.01.2021. Applicant No. 1 has not filed any further submissions to date.
6. The proceedings in the matter could not be completed by the Authority due to lack of the required quorum of Members in the Authority during the period 29.04.2021 till 23.02.2022 and the minimum quorum was restored only w.e.f. 23.02.2022. The matter was taken up for further proceedings vide Order dated 23.02.2022.
7. On the specific request, a personal hearing in the present case was granted through video conferencing on 10.05.2022 at 11:00 AM vide Order dated 19.04.2022. Shri Parikshit Sharma Director, Shri Sarveshwar Sharma (CA), Vivek Das (Accounts Head for Taxation), and Madhusudhan Sharma (CA) appeared for the Respondent. During the personal hearing, the Respondent reiterated his earlier submissions dated 19.11.2020 and 20.01.2021 which have been taken on record.
8. This Authority has carefully considered the Reports of the DGAP, submissions made by the Respondent, and the case records. It is on record

that Applicant No. 1 had filed a complaint alleging that the Respondent has not passed on the benefit of ITC to him by way of a commensurate reduction in the price of the flat purchased by him (Applicant No. 1) from the Respondent. The Authority finds that the DGAP, after investigation, has calculated that the Respondent derived an additional benefit of input tax credit of 3.34% of the turnover, which works out to 1,45,87,404/- (inclusive of GST) for the project "Ruparel Orion". The DGAP has concluded that this benefit of Rs. 1,45,87,404/- was required to be passed on to the recipients.

9. Section 171 of the CGST Act shows that it provides as under:-

"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 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 on 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 whether there was any net benefit of ITC with the introduction of GST. The Authority finds 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 0.92%, whereas, during the post-GST period (July 2017 to December 2019), it was 4.26%. This confirms that in the post-GST period, the Respondent has benefited from additional ITC to the tune of 3.34% (4.26%-0.92%) of his turnover, and the same is required to be passed on by him to the recipients of supply, including the Applicant No. 1, if not already passed on. The Authority finds that the computation of the amount of ITC benefit to be passed on by the Respondent to the eligible recipients works out to Rs.1,45,87,404/-. The DGAP has calculated the amount of ITC benefit to be passed on to all the eligible recipients as Rs. 1,45,87,404/- based on the information supplied by the Respondent. Out of the said amount of profiteering, the benefit required to be passed on by the Respondent to the Applicant No. 1 is Rs. 86215/-.



10. The Authority finds that, vide the submissions dated 19.01.2020 the Respondent has contended that there seemed to be mistakes in DGAP's report dated 28.10.2020. He has contended that the profiteered amount of Rs. 1,45,87,404/- arrived at by the DGAP is not correct and that it should be Rs. 8,43,443/- only. He had submitted a reworking of the Profiteered amount and the Comparative Statement along with a point-wise detailed explanation. In this regard, the Authority finds that the DGAP's report dated 28.10.2020 was based on the facts and data submitted by the Respondent himself. The DGAP has also reported that the Respondent had not filed his Service Tax Return from April 2016 to June 2017. Hence the contention of the Respondent cannot be accepted, and thus the amount of CENVAT of Service Tax from April 2016 to June 2017 computed by the DGAP is hereby accepted as correct and the calculation prepared by the Respondent is rejected.
11. The Respondent has also contended in his submissions that the total sold area of the project during the pre-GST period was 82,550 sq. ft. and that DGAP has taken the same as 34,470 sq. ft. In this context, after having carefully gone through the contentions of the Respondent the Authority finds that "The total sold area (in sq. Ft.) relevant to turnover" referred to the area in respect of which demands have been raised or advances have been received by the Respondent. It did not mean only that area which was actually sold during the said period. For example, if a flat was sold in the pre-GST period and the demands were raised in both pre-GST and post-GST periods, then it would figure at both places. Therefore, the above contention of the Respondent cannot be accepted and the total relevant area based on which the profiteered amount has been computed by DGAP is hereby accepted as correct.
12. The Respondent has contended that as per DGAP's report, ITC of GST availed from July 2017 to December 2019 was Rs. 5,82,71,633/-, however, the Respondent submitted his reworked figure of Rs. 5,82,74,633/-. The Authority finds that figure mentioned in the DGAP's report has been taken from the GST returns filed by the Respondent and have been ascertained as correct. Therefore, the above contention of the Respondent cannot be accepted.
13. As discussed above, this Authority concurs with the DGAP's report dated 28.10.2020. The Authority determines that the Respondent has profiteered by

Rs. 1,45,87,404/- in respect of the project "Ruparel Orion" during the period from 01.07.2017 to 31.12.2019 which includes Rs. 86215/- of the Applicant No. 1 and orders refund/return/passing on of the profiteered amount, if not already done, along with the interest @18% thereon, from the date, when the above determined profiteered amount was profiteered by him till the date of such payment, in line with the provisions of Rule 133 (3) (b) of the CGST Rules 2017. The names of such homebuyers/customers/recipients, along with the unit number, are enclosed with this order as Annexure-A.

14. This Authority under Rule 133 (3) (a) of the CGST Rules, 2017 orders that the Respondent shall reduce the prices to be realized from homebuyers/customers/recipients commensurate with the benefit of ITC received by him as has been detailed above.
15. Since the Respondent has profiteered in the instant project, there is every likelihood that he has profiteered in other projects also under GST No. 27AAECK9069N1ZQ. The Authority has reason to believe that the Respondent may have resorted to profiteering in the other projects also and hence, directs the DGAP under Rule 133(5) to investigate all the other projects of the Respondent under the same GST registration which have not yet been investigated from the perspective of Section 171 of the CGST Act, 2017 and submit the complete investigation report for all the Projects under this single GST Registration.
16. The concerned jurisdictional CGST/SGST Commissioner is directed to ensure compliance of this Order. It may be ensured that the benefit of ITC i.e. the profiteered amount is passed on by the Respondent to each recipient of supply as mentioned in paragraph 13 above along with interest @18%, if not already passed on, from the date that such amount was profiteered till the date of return of such profiteered amount as per the provisions of Rule 133 of the CGST Rules, 2017 within three months of the passing of receipt of this Order failing which, such amounts shall be recovered as per the provisions of the CGST Act, 2017. In this regard, an advertisement of appropriate size (visible enough to the public on an imminent page) may also be published by the concerned Commissioner in a minimum of two local Newspapers/vernacular press in Hindi/English/local language with the details i.e. Name of the builder (Respondent) – M/s.K.D. Lite Developers Pvt Ltd, GST No.

27AAECK9069N1ZQ Project- 'Ruparel Orion' Location- Chembur, Mumbai and amount of profiteering Rs. 1,45,87,404/- so that the concerned homebuyers/customers/recipients can claim the benefit of ITC, if not passed on, till now. Customers/homebuyers/recipients may also be informed that the detailed NAA Order is available on Authority's website www.naa.gov.in. Contact details of the concerned Jurisdictional CGST/SGST Commissioner responsible for compliance of the NAA's order may also be advertised through the said advertisement. Such an advertisement will ensure that the mandate of Section 171(2) of the CGST Act is fulfilled and that the benefit that is due to every eligible recipient is received along with interest, if not already received.

17. The concerned jurisdictional CGST/SGST Commissioner shall also submit a Report regarding the compliance of this Order to this Authority and the DGAP within a period of 4 months from the date of receipt of this Order.
18. The present investigation has been conducted up to 31.12.2019 only. However, the Respondent has not obtained the Completion Certificate (CC) till that date. Therefore, he is liable to pass on the benefit of ITC which would become available to him till the date of issue of CC. Accordingly, the concerned jurisdictional Commissioner CGST/SGST are directed to ensure that the Respondent passes on the benefit of ITC to the eligible flat buyers as per the methodology approved by this Authority in the present case and submit report to this Authority through the DGAP. The Applicant No.1 or any other homebuyers/customers/recipients shall also be at liberty to file complaint against the Respondent before the Maharashtra State Screening Committee in case the remaining benefit of ITC is not passed on to them.
19. Further, the Hon'ble Supreme Court, vide its Order dated 23.03.2020 in Suo Moto Writ Petition (C) no. 3/2020, while taking suo-moto cognizance of the situation arising on account of the Covid-19 pandemic, has extended the period of limitation prescribed under the general law of limitation or any other special laws (both Central and State) including those prescribed under Rule 133(1) of the CGST Rules, 2017, as is clear from the said Order which states as follows:-

"A period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not

shall stand extended w.e.f. 15th March 2020 till further order/s to be passed by this Court in present proceedings.”

Further, the Hon'ble Supreme Court, vide its subsequent Order dated 10.01.2022 has extended the period(s) of limitation till 28.02.2022 and the relevant portion of the said Order is as follows:-

“The Order dated 23.03.2020 is restored and in continuation of the subsequent Orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.”

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

20. A copy of this order be sent, free of cost, to the Applicant No. 1, the DGAP, the Respondent, Chief Commissioner CGST Mumbai Zone, Commissioner of SGST, Maharashtra, the Principal Secretary (Town and Country Planning), Government of Maharashtra as well as MHRERA for necessary action.

S/d
(Amand Shah)
Technical Member &
Chairman



S/d
(Pramod Kumar Singh)
Technical Member

S/d
(Hitesh Shah)
Technical Member

Certified Copy


(Dinesh Meena)
NAA, Secretary

Encl:- Annexure “A” (Pages 1 to 3).

F.No. 22011/NAA/219/KD Lite/2020

Dated: 05.08.2022

Copy To:

1. M/s KD Lite Developers Pvt Ltd, 1st Floor, Plot No. 273 near Big Bazaar, Senapati Bapat Road, Matunga Road West.

2. Sh. Hasmukh Dartary, B-404, Frontline, Hiranandani Gardens, Powai, Mumbai-400076.
3. Director General Anti-Profitteering, Central Board of Indirect Taxes & Customs, 2ndFloor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.
4. Commissioner of Commercial Taxes, GST Bhavan, Mazgaon, Mumbai- 400 010.
5. Chief Commissioner of Central Goods & Services Tax, Mumbai Zone GST Building, 115 M.K. Road, Opp. Churchagate Station, Mumbai-400020.
6. MHRERA, 6th & 7th Floor, Housefin Bhavan, Plot No. C - 21, E - Block, Bandra Kurla Complex, Bandra (E), Mumbai-400051
7. Bandra-Kurla Complex M.M.R.D.A. Office Building, Bandra-Kurla Complex,C-14 & 15, E Block Bandra (East), Mumbai - 400 051
8. Guard file

Sr. No	Customer Code	Name of Customers	Final profiteering
1	A Wing	Mr. Romi Datta	334998
2	A Wing	Mr. Manoj R. Agarwal	127505
3	A Wing	Mr. Shantanu Rastogi	238579
4	A Wing	Mr. Parameswar Menon	558350
5	A Wing	Mrs. Sandhya Pramod Singh	*
6	A Wing	Mr. Hari Ram Misra	*
7	A Wing	Mrs. Aruna Kumaraswamy	430078
8	A Wing	Mr. Cyrus P Irani	37408
9	A Wing	Mr. Ashutosh Narang	98403
10	A Wing	M/s. Octave Project Management Pvt.	163480
11	A Wing	M/s. Octave Project Management Pvt.	164585
12	A Wing	Mr. Kishor Ramji Tank	138759
13	A Wing	Mrs. Jayashree Deepak Nazre	599950
14	B Wing	Mr. Pankaj Ambalal Bera	*
15	B Wing	Mr. Chandrashekhar Namdeo Doiphode	188340
16	B Wing	Mrs. S. Parmeswar	179581
17	B Wing	Mr. Narayan Subramaniam	179244
18	B Wing	Mr. Karthik Kanagaraj	315286
19	B Wing	Mr. Sandeep Mittal	*
20	B Wing	Mr. Nitin Umesh Trivedi	587873
21	B Wing	Mr. Manish B. Jain	224852
22	B Wing	Mr. Dhiren	*
23	B Wing	Mr. Rohan Ramdas Sadula	239336
24	B Wing	Dr. Manjiri Shenoy	552849
25	B Wing	Mr. Aman Batra	106613
26	B Wing	Mr. Saurabh Gupta	*
27	B Wing	Mr. Kuldip Ramsubhag Chauhan	52038
28	B Wing	Mr. Jagdeep Ramsubhag Chauhan	52038
29	B Wing	Mrs. Nilanjana Gupta	334212
30	B Wing	Mr. Sunil Saudai	430940
31	B Wing	Mr. Divyesh Chandrakant Lapsiwala	157899
32	C Wing	Mr. Tilakraj Bahri	*
33	C Wing	Mr. Eledath Prasanth Prabhakaran	81151
34	C Wing	Mr. Tilakraj Bahri	*
35	C Wing	Mr. Amit Shah	64992
36	C Wing	Mr. Rajesh Save	61677
37	C Wing	Mr. RAKESH BHOGAL	*
38	C Wing	Mrs. Anita Deepak Saraf	129282

Annexure -A

Case No. 57 /2022 Hasmukh Dastary vs. M/s. K D Lite Developers Pvt. Ltd.

39	C Wing	Mrs. Preeti Bhutoria	75183
40	C Wing	Mr. Srikant Krishna Yemula	75567
41	C Wing	Mr. Rohan Raghunath Redkar	69028
42	C Wing	Ms. Jinisha Shah	37121
43	C Wing	Mr. Amit Agarwal (HUF)	20200
44	C Wing	Mr. Amit Kumar Sureka	342016
45	C Wing	Ms. Pallavi Ramnath Singh	*
46	C Wing	Mr. Akshay Dattaram Malusare	303884
47	C Wing	Mr. Ketan Keshav Kanade	*
48	C Wing	Mr. Chandrashekhar Giridhar Patil	125092
49	C Wing	Mrs. Anjali Prakash Sathe	325450
50	C Wing	Mr. Atul Monga	129637
51	C Wing	Dr. Mrs Shanta N Satpathy	18704
52	C Wing	Mr. Bhaskar Pandey	102312
53	C Wing	Mr. Ashutosh Narang	67514
54	C Wing	Mrs. Nidhi Batavia	120388
55	C Wing	Mr. Vivek P Balmiki	133154
56	C Wing	Mrs. Meenakshi Maruthai	117575
57	C Wing	D Sharma & Sons (HUF)	116040
58	C Wing	Mr. Hasmukh Dahyalal Daftary	86215
59	C Wing	Mr. Aniket Satish Deshpande	*
60	C Wing	Mr. Reza S. Kazerooni	216680
61	C Wing	Mr. Viraj Sawhney	43324
62	C Wing	Mr. Viraj Sawhney	28352
63	C Wing	Mr. Brijesh Shrivastava	*
64	C Wing	Mr. Sehul B. Shah	188661
65	C Wing	Mrs. Avni Agarwal	52907
66	C Wing	Mr. Yughal Chelani	74550
67	C Wing	Mr. Chhandak Barman	23226
68	C Wing	Mr. Melville M. D'souza	85857
69	C Wing	Mrs. Ruchi M. Rathod	*
70	C Wing	Mr. Gaurav Chaudhary	77248
71	C Wing	Mr. Tushar J. Mhatre	210383
72	C Wing	Mr. Achankunju M.k	113022
73	C Wing	Mr. Krupa Yatin Pasta	103865

Annexure –A

Case No. 57 /2022 Hasmukh Dastary vs. M/s. K D Lite Developers Pvt. Ltd.

74	C Wing	Mr. Sudesh Anil Palav	301995
75	C Wing	Mr. Sunnyraj L Acharekar	37408
76	D Wing	Mrs. Nidhi Jain	57711
77	D Wing	Mr. Sanjay Babu Patekar	102648
78	D Wing	Mr. Vivek Jain	74891
79	D Wing	M/S. Bennet Coleman	*
80	D Wing	Mr. Amit Shah	64417
81	D Wing	Mr. Manish Anil Nagwekar	*
82	D Wing	Mrs. Sonali Shukla	130121
83	D Wing	Mr. Amit Shah	63151
84	D Wing	Mr. Marshal Christopher Verma	75183
85	D Wing	Mr. Arun Kumar	*
86	D Wing	Mr. Sanjeev Pandey	17806
87	D Wing	Mr. Shrivardhan Despande	81836
88	D Wing	Mrs. Seema Vikram Nerlekar	140256
89	D Wing	Mrs. Nayana Vishal Sonawane	*
90	D Wing	Mr. Naresh Shankar Vasal	105630
91	D Wing	Mrs. Suman Dinesh Kunder	62310
92	D Wing	Mrs. Ramanpreet Kaur	220352
93	D Wing	Mr. Rajasingh Thiruviam Nadar	232079
94	D Wing	Mrs. Kavita Singh	174944
95	D Wing	Dr. Ashish Bapurao Dhemre	80914
96	D Wing	Mr. Sandeep Roy Chowdhary	179424
97	D Wing	Mr. Pankaj Laxman Mhetar	424880
98	D Wing	Dr. Narendrakumar Ambaji Haralkar	263165
99	D Wing	Dr. Swapnali Ajay Karande	231746
100	D Wing	Mr. Ishwar Premani	294830
101	D Wing	Mr. Zal Rusi Doctor	97479
102	D Wing	Mr. Zal Rusi Doctor	92653
103	D Wing	Mrs. Gayathri Kumaraswamy	317968
104	D Wing	Mrs. Minaxi Soni	37408
105	D Wing	Mr. Amit V. Ahuja	209745
106	D Wing	Mr. Milind Vishnu Topkar	101002
		Total	1,45,87,404/-

*No profiteered Amount has been computed in DGAP's report.