



BEFORE THE COMPETITION COMMISSION OF INDIA

(AUTHORITY UNDER SECTION 171 OF THE CENTRAL GOODS & SERVICES TAX ACT, 2017)

Case No. : 22/2023
Date of Institution : 29.10.2021
Date of Order : 29.11.2023

In the matter of:

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

Applicant

Versus

M/s. MICL Realty LLP, 12th Floor, Krushal Commercial Complex, Above Shoppers Stop, G.M. Road, Chembur (West), Mumbai-400 089.

Respondent

Coram:-

1. Smt. Ravneet Kaur, Chairperson
2. Sh. Anil Agrawal, Member
3. Ms. Sweta Kakkad, Member
4. Sh. Deepak Anurag, Member

ORDER

1. A reference was received from the Standing Committee on Anti-profiteering on 19.03.2021 by the Director General of Anti-profiteering (DGAP) to conduct a detailed investigation in respect of an Application filed under Rule 128 of the CGST Rules, 2017 (hereinafter referred to

as “the Rules”) alleging profiteering by M/s. MICL Realty LLP, 12th Floor, Krushal Commercial Complex, Above Shoppers Stop, G.M. Road, Chembur (West), Mumbai-400 089 (hereinafter referred to as “the Respondent”) in respect of a flat bought in the Respondent’s project “Aaradhya Nine- Ghatkopar Avenue”, situated at Pant Nagar, Ghatkopar East, Mumbai-400075. The Complainant alleged that the Respondent had not passed on the benefit of ITC to him by way of commensurate reduction in price and charged GST @12% on the amount due to him against payments. **The Complainant has requested to keep his application confidential.**

2. The DGAP after investigation has submitted his Report on 29.10.2021 in which he has stated that: -

- I. The Complainant submitted that the Respondent had committed to give ITC against the GST paid and refund the excess amount post completion of the project. However, after receipt of possession, he had called and emailed the Respondent but no response was received. The Complainant also submitted that the Respondent had processed refund for a close set of people. Further, the Complainant submitted copies of receipts of payments made by him and the Letter/e-mail correspondence made with the Respondent along with his application in APAF-1 form.
- II. On receipt of the aforesaid reference from the Standing Committee on Anti-profiteering on 19.03.2021, a Notice under Rule 129 of the Rules was issued by DGAP on 18.05.2021, calling upon the Respondent to reply as to whether he admitted that the benefit of ITC had not been passed on to the recipients by way of commensurate reduction in prices and if so, to suo moto determine the quantum thereof and indicate the same in his reply to the Notice as well as to furnish all documents in support of his reply. Further, in the said Notice dated 18.05.2021, the Respondent was given an opportunity to inspect the non-confidential evidences/ information during the period

01.06.2021 to 04.06.2021. However, the Respondent had not availed of the said opportunity to inspect the non-confidential documents.

- III. The Complainant was also given an opportunity to inspect the non-confidential documents/reply furnished by the Respondent on 06.09.2021 or 07.09.2021 vide e-mail dated 01.09.2021. However, vide e-mail dated 06.09.2021, the Complainant expressed his inability to visit the office due to health issues. The Complainant was also requested to confirm the receipt of the benefit passed on by the Respondent which the Complainant acknowledged and confirmed vide his aforesaid e-mail dated 06.09.2021.
- IV. The period covered by the current investigation was from 01.07.2017 to 03.12.2019 (since, the payment agreements entered into with the buyers was construction linked and the Occupancy Certificate for the entire project was received on 03.12.2019).
- V. In response to the Notice dated 18.05.2021 and various reminders, Respondent replied vide letters/e-mails dated 03.06.2021, 28.06.2021, 14.07.2021, 04.08.2021, 21.08.2021, 31.08.2021, 06.09.2021, 23.09.2021 and 06.10.2021. The detailed submissions of the Respondent were summed up as follows: -
 - (a) The Respondent has submitted that it is a Limited Liability Partnership (LLP) incorporated on 09.09.2015 and was engaged in the business of builders and developers. The Respondent submitted that they had only one project i.e. "Aaradhya Nine- Ghatkopar Avenue" which was situated at Pant Nagar, plot bearing CTS No. 194 A/9/6 (Part) of Village Ghatkopar East, Mumbai. Further, the impugned project was a Society Redevelopment project wherein old and dilapidated buildings were demolished, and new

buildings were constructed. There were three individual societies that were amalgamated to form a single project "Aaradhya Nine". The development rights were transferred to the Respondent and in lieu of such transfer of development rights, the Respondent has handed over 96 units in the new building to the existing members of the societies, free of cost (one unit each to 96 members). The additional units over and above the units handed over to existing members were sold to independent buyers for consideration. The brief summary of the Units in the project had been tabulated in Table-'A' below:

Table-'A'

Sr. No.	Particulars	No. of Units	Saleable Area (Sq. ft.)	Remark
1.	Existing Members	96	42,767	No Consideration received.
2.	Independent Buyers- Pre OC	85	61,680	GST Charged.
3.	Independent Buyers- Post OC	67	44,697	No GST Charged in terms of Para 5(b) of Schedule II read with Para 5 of Schedule III. Proportionate ITC reversed.
4.	Unsold Units as on 28.02.2021 (These units have also been sold thereafter)	3	2,685	
	Total	251	1,51,829	

- (b) The Respondent has also submitted that the Payment schedule for the units sold in the project was construction linked and not time linked.
- (c) The Respondent has further submitted that his project "Aaradhya Nine- Ghatkopar Avenue" was an affordable housing project having infrastructure status as provided in the Notification of Government of India, Ministry of Finance, Department of Economic Affairs vide F.No.13/6/2009-INF, dated the 30th March, 2017. He also submitted that the Central Government, on the recommendation of the GST Council, had reduced the GST rate from 18% to 12% (Effective GST from 12% to 8% along with 1/3rd abatement for land value) w.e.f. 25.01.2018 vide Notification No. 01/2018-Central Tax (Rate) dated 14.11.2017 on low-cost houses up to a carpet area of 60 square meters per house

in an affordable housing project which has been given infrastructure status vide Notification of Government of India, Ministry of Finance, Department of Economic Affairs vide F.No.13/6/2009-INF, dated 30th March,2017.

- (d) The Respondent had further submitted that in the project, he has 163 units of area less than 60 sq. mtr. each (total area 77,055 sq. mtr.) and the remaining 88 units have area of more than 60 sq. mtr. each (total area 74,774 sq. mtr.). Therefore, the area of affordable units was approx. 51% $[77,055 \div (77,055 + 74,774)]$. He informed that he had sold total 85 units before receipt of the Occupancy Certificate out of which 32 units (with carpet area upto 60 square meters) were in an affordable category on which he has charged 8% GST (after 1/3rd abatement towards land) and the remaining 53 units were other than an affordable category on which GST was charged at the rate of 12% (after 1/3rd abatement towards land). It was further submitted that although the units in the project were sold after the implementation of GST, being a customer-oriented and law-abiding entity, he has passed on the benefit of ITC amounting to Rs. 94,83,735/- by way of issuance of cheques to 48 homebuyers. Furthermore, he has issued 2 cheques amounting to Rs. 3,17,531/- to 2 homebuyers but the same were not collected by them. Further, the benefit was not passed on to 2 units due to certain disputes pending to be resolved. With regard to the remaining 33 units, it was submitted that he has sold these units to the homebuyers wherein the price was negotiated after taking in to account various factors including the GST benefit of ITC to be passed on under Section 171 of the CGST Act, 2017 and accordingly, the agreed price between the Respondent and these 33 homebuyers was after giving effect to such benefit in accordance with/adherence *inter alia* to the provisions of Section 171 of the Central Goods &

Service Tax Act, 2017 and no further benefit was required to be passed on by the Respondent.

VI. The Respondent had submitted the following documents/information vide the aforementioned letters/e-mails:

- (a) Brief profile of the Respondent.
- (b) Copies of GSTR-1, GSTR-3B & GSTR-9 Returns for the period July, 2017 to February, 2021.
- (c) Copy of Electronic Credit Ledger for the period July, 2017 to February, 2021.
- (d) Copy of Trans-1.
- (e) Copies of ST-3 and VAT Returns for the period April, 2016 to June, 2017.
- (f) Tax rates - pre-GST and post-GST.
- (g) Copy of Audited Balance Sheets for FY 2016-17 to FY 2019-20.
- (h) Declaration in Annexure-IV to the Notification No. 3/2019-CT (Rate) dated 29.03.2019.
- (i) Copies of all the demand letters and sales agreement executed with one of the buyers in the project.
- (j) Copy of Land Development Deed dated 30.03.2016 between the Respondent and the existing societies along with unit wise details of 96 existing members.
- (k) Status of the project "Aaradhya Nine- Ghatkopar Avenue" as on 28.02.2021 in terms of sold and unsold units.
- (l) Invoice-wise CENVAT/Input Tax Credit register for the period April, 2016 to February, 2021 reconciling with ST-3 and GSTR-3B returns.
- (m) Details of VAT, Service Tax and GST turnover, output tax liability payable and ITC availed by the Respondent for the period April, 2016 to February, 2021.
- (n) Copy of Challan No. BARB20012700984485 dated 24.01.2020 vide which ITC was reversed on account of units unsold at the time of receipt of OC.

- (o) Copies of documents vide which output liability on existing member's share (96 units) discharged in post-GST regime on receipt of OC.
- (p) Copy of Architect Certificate submitted to RERA for periodical progress till February 2021.
- (q) Copy of Full Occupation Certificate & Building Completion Certificate No. MH/EE/(B.P.)/GM/MHADA-01/005/2019 dated 03.12.2019 issued by Maharashtra Housing and Area Development Authority (MHADA).
- (r) List of home buyers in the project "Aaradhya Nine-Ghatkopar Avenue" along with details of benefit passed on.
- (s) Copies of all documentary evidences vide which benefit was passed on to the customers viz. Customers signed confirmation letters w.r.t. receipt of benefit passed on by way of cheques, Bank Statement depicting payment of cheques and Customers confirmation w.r.t. arriving sale price after adjustment of GST benefit to be passed on under section 171 of the CGST Act.

VII. The Respondent has submitted that the documents/information including the annexure submitted vide his various e-mails/letters was very sensitive and requested to keep him Strictly Confidential in terms of Rule 130 of the Rules, except the following:

- a. Copies of Declaration in Annexure-IV to the Notification No. 03/2019-CT (Rate) dated 29.03.20219.
- b. Details of applicable tax rates, Pre & Post-GST
- c. Copy of Occupation /Completion Certificate dated 03.12.2019 issued by MHADA.
- d. Copy of RERA documents.

VIII. The reference received from the Standing Committee on Anti-profiteering, various replies of the Respondent and the

documents/evidences on record had been carefully examined.
The main issues for determination were:

- i. Whether there was the benefit of reduction in the rate of tax or additional benefit of ITC on the supply of Construction Services by the Respondent on implementation of GST w.e.f. 01.07.2017 and if so,
 - ii. Whether such benefit was passed on by the Respondent to the recipients, in terms of Section 171 of the CGST Act, 2017.
- ix. The Respondent vide e-mail dated 04.08.2021 had submitted payment plan (part of the Agreement for Sale), demand & tax invoices for the sale of flat no. A-901 in Wing-A to Sh. Ketan Mukundrai Mehta, measuring 979 square feet (carpet area). The Payment Schedule for the said unit is furnished in Table-'B' below.

Table - 'B'

(Amount in Rs.)

S. No.	Payment Stage	Ratio to total Sale Price
1	On Booking	10%
2	On Registration of Agreement for Sale	10%
3	On Completion of Excavation	10%
4	On Completion of Basement	10%
5	On Completion of Plinth	5%
6	On Completion of 1 st Floor Slab	4%
7	On Completion of 4 th Floor Slab	4%
8	On Completion of 7 th Floor	4%
9	On Completion of 10 th Floor Slab	4%
10	On Completion of 13 th Floor Slab	4%
11	On Completion of Terrace Slab	5%
12	On Completion of Walls and Plaster/Gypsum	4%
13	On Completion of Flooring, Doors, Windows and Sanitary Fittings and Staircases, Lift wells, Lobbies	6%
14	On Completion of Terraces with Water Proofing of the Building	4%
15	On Completion of External Plumbing, External Plaster, Elevation of the Building, Lift and Water Pumps and Electrical Fittings	10%
16	On Possession	6%
Total		100%

- x. Another relevant point in this regard was para 5 of Schedule-III of the CGST Act, 2017 (Activities or Transactions which should 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 the completion certificate, where required, by the competent authority or after his first occupation, whichever was earlier". Thus, the ITC pertaining to the residential units and commercial shops which were under construction but not sold was a provisional ITC which might be required to be reversed by the Respondent if such units remained 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 reads as under:

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

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

Therefore, the ITC pertaining to the unsold units might not fall within the ambit of this investigation and the Respondent was required to recalibrate the selling prices of such units to be sold

to the prospective buyers by considering the net benefit of additional ITC available to him post-GST.

However, in the present case, the Respondent has received the Full Occupation Certificate & Building Completion Certificate on 03.12.2019, and therefore, units sold post 03.12.2019 would be considered as 'Non-GST Supply' in terms of Para 5(b) of Schedule II read with Para 5 of Schedule III on which GST was not leviable.

- XI. As regards the allegation of profiteering, it was observed that prior to 01.07.2017, i.e., before the GST was introduced, the Respondent was eligible to avail CENVAT Credit of Service Tax paid on Input Services but no credit was available in respect of Central Excise Duty and VAT paid on the inputs. However, post-GST, the Respondent could avail ITC of GST paid on all the Inputs and the Input Services including the sub-contracts. For the period April, 2016 to 03.12.2019, on the basis of the details of the ITC availed by the Respondent, his turnover from the impugned project "Aaradhya Nine- Ghatkopar Avenue" the ratio of ITC to Turnover, during the pre-GST (April, 2016 to June, 2017) and post-GST (July, 2017 to 03.12.2019) periods, was furnished in Table- 'C' below: -

Table - 'C'

(Amount in Rs.)

S. No.	Particulars	April, 2016 to June, 2017 (Pre-GST)	July, 2017 to 03.12.2019 (Upto OC) (Post-GST)
(1)	(2)	(3)	(4)
1.	CENVAT of Service Tax Paid on Input Services as per ST-3 (A)	53,94,023	-
2.	Input Tax Credit of VAT Paid on Purchase of Inputs (B)	-	-
3.	Input Tax Credit of GST Availed (before reversal) as per GSTR-3B (C)	-	14,41,46,093
4.	Total CENVAT/Input Tax Credit Availed (D)= (A+B) or (C)	53,94,023	14,41,46,093
5.	Total Turnover as per List of Home Buyers (Net of Cancellation) (reconciled with ST-3/GSTR-3B) (E)	14,35,407	1,37,33,19,691
6.	Total Saleable Carpet Area (reconciled with RERA) (in SQF) (F)	1,51,829	1,51,829
7.	Total Sold Area relevant to Turnover (G)	1,696	61,680
8.	Relevant CENVAT/ITC [(H)= (D)*(G)/(F)]	60,254	5,85,58,846
Ratio of CENVAT/Input Tax Credit to Turnover [(I)= (H)/(E)]		4.19%	4.26%

- XII. From the above Table- 'C', it was clear that the ITC as a percentage of the turnover that was available to the Respondent during the pre-GST period (April, 2016 to June, 2017) was 4.19% whereas, during the post-GST period (July, 2017 to 03.12.2019), the percentage was 4.26%. This clearly confirmed that post-GST, the Respondent had been benefited from additional ITC to the tune of 0.07% [4.26% (-) 4.19%] of the turnover. Accordingly, the profiteering had been examined by comparing the applicable tax rate and ITC available in the pre-GST period (April, 2016 to June, 2017) when Service Tax @4.50% and VAT @1% were payable (total tax rate of 5.50%) with the post-GST period (July, 2017 to 03.12.2019) when the effective GST rate was 12% (GST @18% along with 1/3rd abatement for land value) on Construction Services, vide Notification No.11/2017-Central Tax (Rate), dated 28.06.2017. The effective GST rate on Construction Services in respect of affordable and low-cost houses upto a carpet area of 60 square metres per house was further reduced from 12% to 8%, vide Notification No. 1/2018-Central Tax (Rate) dated 25.01.2018. Accordingly, on the basis of the figures contained in Table- 'C' above, the comparative figures of the ratio of ITC availed/available to the turnover in the pre-GST and post-GST periods as well as the turnover, the recalibrated base price and the excess realization (profiteering) during the post-GST period, has been tabulated in Table- 'D' below: -

Table - 'D'

(Amount in Rs.)

S. No.	Particulars		Post- GST		
1	Period	A	01.07.2017 to 03.12.2019 (upto OC)		
2	Output GST Rate (%)	B	12.00%		
3	Ratio of CENVAT credit/ ITC to Total Turnover as per table - 'C' above (%)	C	4.26%		
4	Increase in ITC availed post-GST (%)	D= 4.26% less 4.19%	0.07%		
5	<u>Analysis of Increase in input tax credit:</u>		01.07.2017 to 03.12.2019 (12% GST)	25.01.2018 to 03.12.2019 (8% GST)	Total
6	Total Base Price raised/collected during July, 2017 to 03.12.2019 (Rs.)	E	1,00,96,28,161	36,36,91,530	1,37,33,19,691
7	Less: Base Price raised during July, 2017 to 03.12.2019 (Flats sold after 01.07.2017 and Price negotiated after ITC adjustments)	F	36,46,70,100	18,10,07,630	54,56,77,730
8	Net Base Price raised/collected during July, 2017 to 03.12.2019 (Rs.)	G=E-F	64,49,58,061	18,26,83,900	82,76,41,961
9	GST @ 12% or 8% over Base Price	H=G*12% or 8%	7,73,94,967	1,46,14,712	9,20,09,679
10	Total amount collected/raised by Noticee	I=G+H	72,23,53,028	19,72,98,612	91,96,51,640
11	Recalibrated Base Price	J= (G)*(1-D) or 99.93% of (G)	64,45,06,590	18,25,56,021	82,70,62,611
12	GST @ 12% or 8%	K=J*12% or 8%	7,73,40,791	1,46,04,482	9,19,45,273
13	Commensurate demand price	L=J+K	72,18,47,381	19,71,60,503	91,90,07,884
14	Excess Collection of Demand or Profiteering Amount	M=I-L	5,05,647	1,38,109	6,43,756

XIII. From the Table-D above, it might be deduced that the additional ITC of 0.07% of the turnover should have resulted in the commensurate reduction in the base price as well as tax price. Therefore, in terms of Section 171 of the CGST Act, 2017, the benefit of such additional ITC was required to be passed on by the Respondent to the respective Recipients.

XIV. Accordingly, from the above calculation, it was evident that on the basis of the aforesaid CENVAT/Input Tax Credit availability in the pre and post-GST periods and the details of the amount

raised/collected by the Respondent from the Complainant and other home buyers during the period 01.07.2017 to 03.12.2019, the Respondent had benefited by an additional amount of Input Tax Credit, by an amount of Rs. 6,43,756/- which included applicable GST (12% or 8%) on the base amount of Rs. 5,79,349/-.

- xv. On the basis of the details of outward supplies of the Construction Services submitted by the Respondent it was observed that the said Services had been supplied in the State of Maharashtra only.
- xvi. The DGAP had also observed that the above computation of profiteering was with respect to 52 home buyers from whom consideration value had been raised/received by the Respondent during the period 01.07.2017 to 03.12.2019. Whereas the Respondent had booked total of 152 units in the whole project as on 28.02.2021, however, the Respondent had submitted that effective from 01.07.2017, he had sold 33 flats at the rates agreed by the customers and the price was negotiated after taking into account various factors including the GST benefit of ITC to be passed on under Section 171 of the CGST Act and accordingly the agreed prices between the Respondent and these 33 homebuyers were after giving effect to such benefit in accordance with/adherence inter alia to the provisions of Section 171 of the Central Goods & Service Tax Act, 2017 and no further benefit was required to be passed on by the Respondent. Furthermore, remaining 67 Units [152 – (52+33)] had been sold after receipt of OC which were categorised as 'Non-GST Supply' on which no GST was charged in terms of Para 5(b) of Schedule II read with Para 5 of Schedule III of the CGST Act, 2017.
- xvii. The DGAP had concluded the investigation stating that the Respondent had passed on the benefit of Rs. 94,83,735/- by issuing cheques to 48 home buyers against the demand raised during the period from 01.07.2017 to 03.12.2019. The

Respondent had submitted copies of the Bank Statements along with copies of signed customer confirmation letters for receipt of cheques from all the home buyers vide his submissions dated 31.08.2021 vide which he had passed on the benefit of ITC and the same were duly verified by DGAP with the list of home buyers and found to be correct. The Respondent also submitted sample copies of signed confirmations given by customers acknowledging that the agreed prices between the Respondent and them were after giving effect to such benefit in accordance with/adherence *inter alia* to the provisions of Section 171 of the Central Goods & Service Tax Act, 2017. Further, to substantiate the Respondent's claim of passing on the benefit of ITC, e-mails were sent to the Complainant and 56 other home buyers (whose e-mail IDs were available) on 01.09.2021 for confirmation of receipt of benefit of ITC from the Respondent. Furthermore, letters dated 08.09.2021 were also written to 24 home buyers (whose reply was not received) apart from telephone calls made to home buyers whose contact numbers could be obtained and requested them to reply via e-mails/letters. In response, total 41 home buyers replied (including the Complainant) (34 home buyers to whom the benefit was passed on by issuing cheques and 7 home buyers where benefit was adjusted in the agreement prices) and all had confirmed the receipt of the benefit of ITC from the Respondent which was about 51% of the total number of buyers to whom benefit had been passed on. Further, no home buyer denied to have received the benefit of the ITC passed on by the Respondent.

- XVIII. The DGAP vide letter dated 01.09.2021, requested the Kotak Mahindra Bank to confirm the payment made by the Respondent to his home buyers. In response, vide e-mail dated 26.09.2021, the Kotak Mahindra Bank replied and confirmed the payments made to the home buyers by the Respondent and also submitted the Bank Statement of the Respondent for the period 28.02.2020 to 31.01.2021 as per his Bank records. The DGAP had cross checked the Bank Statements as submitted by

the Kotak Mahindra Bank with the details of benefit passed on by the Respondent and also the Bank Statements as provided by the Respondent and observed that the claim of the Respondent that payment had been made to 48 home buyers by cheques were found to be correct.

- XIX. The DGAP had further submitted that on examination of all the documentary evidences and after getting confirmations from the buyers and the Bank, it appeared that in some cases, the Respondent has passed on the benefit of ITC more than the required commensurate benefit whereas in some cases, the benefit of ITC passed on was less than the required commensurate benefit. A summary of category-wise ITC benefits required to be passed on and the benefit passed on, are furnished in Table - 'E' below: -

Table-'E'

(Amount in Rs.)

S. No.	Category of Customers	No. of Units	Area (in Sqft)	Benefit to be passed on as per Annex-17	Benefit Passed on by the Respondent	(Excess)/ Shortage of Benefit (profiteering)	Remark
A	B	C	D	E	F	G=E-F	H
1.	Home Buyers including Applicant	4	2,370	35,114	-	35,114	Benefit to be passed on. List Attached as Annex-21.
2.		48	36,243	6,08,642	94,83,735	(88,75,093)	Excess Benefit passed on. List Attached as Annex-22.
3.	Other Buyers	33	23,067	-	-	-	Unit Sold Post-GST and Price negotiated after ITC adjustments. No benefit to be passed on.
4.		67	44,697	-	-	-	Unit Sold after receipt of Occupancy Certificate. No benefit to be passed on as No GST charged.
5.		3	2,685	-	-	-	Unsold Units as on 28.02.2021
6.	Existing Members	96	42,767	-	-	-	No Consideration was received.
Total		251	1,51,829	6,43,756	94,83,735		

- XX. From the above Table 'E', it was observed that the Respondent was required to pass on the benefit of ITC in the case of 4 home

buyers (Sr. 1 of the above Table) by an amount of Rs. 35,114/-. Further, the benefit passed on by the Respondent was higher than what he should have passed on in respect of 48 home buyers including the Complainant (Sr. 2 of the above Table) by an amount of Rs. 88,75,093/-. However, this excess benefit passed on to some recipients, could not be offset against the additional benefit required to be passed on to other home buyers who had not received the commensurate benefit as each recipient/home buyers were entitled to commensurate benefit. Furthermore, it was also observed from the List of home buyers submitted by the Respondent that the Respondent had raised complete demands from the Pre-OC sold units, as on the date of receipt of the Occupancy Certificate and no demand was pending to be raised on such units.

- XXI. The DGAP had also submitted that it appeared that the benefit of additional ITC to the tune of 0.07% of the turnover, had accrued to the Respondent during the period 01.07.2017 to 03.12.2019 and the same was required to be passed on by the Respondent to the home buyers. On that account, the Respondent was required to pass on the additional benefit of ITC amounting to Rs. 35,114/- as mentioned in Sr. No. 1 of Table- 'E', to 4 other recipients who were not Applicants in the present proceedings. These recipients were identifiable as per the documents provided by the Respondent, giving the names and addresses along with Unit No. allotted to such recipients. Therefore, that additional amount of Rs. 35,114/- was required to be passed on to such eligible recipients. The Respondent had supplied Construction Services in the State of Maharashtra only.
- XXII. In view of the aforementioned findings, it appeared that Section 171(1) of the CGST Act, 2017, which requires that *"any reduction in the rate of tax on any supply of goods or services or the benefit of ITC shall be passed on to the recipient by way of commensurate reduction in prices"*, **has been contravened by M/s. MICL Realty LLP** in the present case.

3. The above report of the DGAP dated 29.10.2021 was considered by NAA in its meeting held on 23.02.2022 and accordingly a Notice dated 25.02.2022 was issued to the Respondent to submit his written statement. He was also informed that personal hearing will be held, preferable through video conferencing, only on specific request.
4. The Respondent, vide his written submissions dated 12.04.2022, 31.10.2023 submitted that in terms of the conclusion given in Para 24 of the DGAP Report, the Respondent was required to pass on the additional benefit of ITC amounting to Rs. 35,114/- to the following customers ('remaining recipients').

Customer Name	Unit No	Benefit to be passed on (INR)
JITENDRA RATILAL SHAH	8-904	10,330
SANKET DANGI	8-601	10,330
PARESH MOHANBHAI DAMA	D-1104	5,007
JYOTI YOGESH RAVAL	B-802	9,447

In this regard, it was submitted by the Respondent that, without prejudice to the various options available under law and being a law abiding Company, he has paid the said amounts to the above mentioned 4 customers as mentioned in the DGAP's Report. Further, the Respondent also enclosed a copy of his Bank Statement reflecting the above payments and acknowledged copies of NEFT to the above customers.

Further, the Respondent had requested to drop the present proceeding as he had passed on the benefit of ITC to all eligible homebuyers.

5. Clarifications were sought from the DGAP on the above submissions of the Respondent under Rule 133(2A) of the CGST Rules, 2017. The DGAP filed his clarifications dated 10.05.2022 vide which the DGAP had replied that all 4 NEFT transactions had been confirmed by Bank vide email dated 02.05.2022.
6. The Respondent was directed by the Commission to appear before it on 02.11.2023. However, inspite of the service of notice the Respondent had not appeared for hearing. Meanwhile, vide email dated 31.10.2023 the Respondent had affirmed that he had complied with the requirements set forth with respect to the passing on the benefits of ITC to the eligible homebuyers and there was no further liability to be borne. The Respondent had also requested in the event that the Commission contemplated a decision that could be adverse or detrimental to the Respondent, the Respondent would like to avail the option of being present before the Commission for the final hearing to provide comprehensive submissions in his defence.
7. This Commission has carefully examined the DGAP's Report including documents enclosed therewith and the written submissions of the Respondent and clarifications filed by the DGAP. It was noted that the Respondent was a LLP and in the business of builders and developers. It was also noted that he was having only one project i.e. "Aaradhya Nine-Ghatkoper Avenue". The impugned project was a Society Redevelopment project of three societies which were amalgamated to form a single project "Aaradhya Nine-Ghatkoper Avenue". The project "Aaradhya Nine-Ghatkoper Avenue" was an affordable housing project in which there were 163 units the area of which was less than 60 Sq. mtr. and the remaining 88 units which had area of more than 60 sq. mtr. each. The Developmental Rights were transferred to the Respondent and in lieu of such transfer of development rights, the Respondent had handed over 96 units to the existing members of the Societies, free of cost. The additional units (total 155) were to be sold

to the independent buyers for consideration. It is also on record that the Complainant had alleged that the Respondent had not passed on the benefit of ITC on the flat purchased from the Respondent by him, in terms of Section 171 of the CGST Act, 2017.

8. Section 171 of the CGST Act provides as under: -

“Any reduction in rate of tax on any supply of goods or services or the benefit of ITC shall be passed on to the recipient by way of commensurate reduction in prices.”

It is clear from the plain reading of Section 171 (1) mentioned above that it deals with two situations: - One relating to the passing on the benefit of reduction in the rate of tax and the second pertaining to the passing on the benefit of the ITC. On the issue of reduction in the tax rate, it is apparent from the DGAP's Report that there has been no reduction in the rate of tax in the post GST period. Hence, the only issue to be examined is as to whether there was any net benefit of ITC with the introduction of GST. This Commission 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 4.19%, 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 been benefited from additional ITC to the tune of 0.07% (4.26% - 4.19%) of his turnover and the same is required to be passed on by him to the recipients of supply, including the Complainant. The Respondent had sold 85 units before receipt of Occupancy Certificate out of which 32 units were in affordable category on which he had charged 8% GST (after 1/3 abatement towards land) remaining 53 units were other than affordable category on which GST was charged @12% (after 1/3rd abatement towards land). Out of the 85 units, 33 units were sold Post-GST and prices were negotiated after ITC adjustments. Hence, there were only 52 units in respect of which benefit of ITC was required to be passed on. The Commission also 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. 6,43,756/-

which includes applicable GST (12% or 8%) on the base amount of Rs. 5,79,349/- with respect to 52 homebuyers on the basis of the information supplied by the Respondent. The Respondent has not disputed the methodology adopted by the DGAP or the amount of profiteering worked out by the DGAP.

9. The Commission further finds from the records that the Respondent has already passed on excess benefit of Input Tax Credit amounting to Rs. 94,83,735/- by the way of issuance of cheques to 48 homebuyers and has not passed on benefit of ITC amounting to Rs. 35,114/- in respect of 4 homebuyers as required under the provisions of Section 171 of the CGST Act, 2017. The said profiteered amount is to be passed on to the eligible home buyers along with interest @ 18% thereon, from the date when the above amount was profiteered by him till the date of such payment made as per the detailed furnished by the DGAP vide Annexure- 21 of his report dated 29.10.2021. As per the said Annexure, the below mentioned amount of benefit was required to be passed on to the following customers.

S.No.	Customer Name	Unit No.	Benefit to be passed on (INR)
1.	Jitendra Ratilal Shah	B-904	10,330/-
2.	Sanket Dangi	B-601	10,330/-
3.	Paresh Mohanbhai Dama	D-1104	5,007/-
4.	Jyoti Yogesh Raval	B-802	9,447/-

10. Based on the above facts, the profiteered amount for the period from 01.07.2017 to 03.12.2019, in the instant case, is determined as Rs. 35,114/- under Section 171 of the CGST Act, 2017.

11. The Commission also takes note of the fact that the Respondent vide his submissions dated 12.04.2022 has claimed to have passed on the benefit of ITC amounting to Rs. 35,114/- to the respective homebuyers to which the benefit of ITC was not passed on by the Respondent as per the report of DGAP. To corroborate his claim, the Respondent had submitted the copy of Bank Statement, NEFT transactions details and copies of cheques in respect of the above payment. The same has been confirmed by the Bank of Baroda, Ghatkopar, West Branch.
12. It is evident from the above narration of facts that Respondent has denied the benefit of Input Tax Credit (ITC) to the customers/shop buyers in contravention of the provisions of Section 171 (1) of the CGST Act, 2017 and he has thus committed an offence under Section 171 (3A) of the above Act and therefore, he is liable for imposition of penalty under the provisions of the above Section. However, since the provisions of Section 171 (3A) have come into force w.e.f. 01.01.2020 whereas the period during which violation has occurred is w.e.f. 01.07.2017 to 03.12.2019, hence the penalty prescribed under the above Section cannot be imposed on the Respondent retrospectively. Accordingly, Show Cause Notice directing him to explain why the penalty prescribed under Section 171 (3A) of the above Act read with Rule 133 (3) (d) of the CGST Rules, 2017 should not be imposed on him, is not required to be issued.
13. Further, it is also revealed that the Respondent has not paid the interest amount @ 18% thereon, from the date when the above amount was profiteered by him till the date of such payment made as per the detailed furnished by the DGAP vide Annexure- 21 of his report dated 29.10.2021. Accordingly, the Respondent is directed to pay the interest to the 4 home buyers w.e.f. the date he had profiteered the above amount till the date on which benefit was passed on. The DGAP is also directed to ensure that the interest at applicable rate, is paid by the Respondent and payment of the interest within three months of this Order shall be confirmed by him.
14. The concerned jurisdictional CGST/SGST Commissioner shall also submit a Report regarding compliance of this Order to this Commission

and the DGAP within a period of 4 months from the date of receipt of this Order.


15. A copy of this order be supplied to all the parties free of cost and file of the case be consigned after completion.

S/d.
(Deepak Anurag)
Member

S/d
(Sweta Kakkad)
Member

S/d.
(Anil Agrawal)
Member

S/d.
(Ravneet Kaur)
Chairperson

Certified Copy

(Anupama Anand)
Secretary, Anti-profiteering

F. No. 22011/NAA/MICL/49/2022 / 1221-1223
Copy To:-

Date: 29.11.2023

1. M/s MICL Realty LLP, 12th Floor, Krushal Commercial Complex, Above Shopper Stop, G.M. Road, Chembur (West), Mumbai – 400089.
2. Directorate General of Anti-Profiteering, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, New Delhi-110001.
3. Guard File.