

BEFORE THE NATIONAL ANTI-PROFITEERING AUTHORITY
UNDER THE CENTRAL GOODS & SERVICES TAX ACT, 2017

I. O. No.	23/2022
Date of Institution	24.09.2021
Date of Order	28.09.2022

In the matter of:

1. **Sh. Nitin Kumar Joshi**, Block-6, 302, GKS Pride, Balajinagar Road, Yapral, Hyderabad-500087.
2. **Director General of Anti-Profitteering**, Central Board of Indirect Taxes & Customs, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.

Applicants

Versus

M/s GK ARPL Ventures, 35-69, GK Colony, Sainikpuri Post, Secunderabad-500094.

Respondent

Quorum:-

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

Present:-

1. Sh. Nitin Kumar Joshi, Applicant No. 1, Sh. Manoj Singh for the DGAP.
2. Sh. Sateesh Reddy, CA & authorised representative for the Respondent.

ORDER

1. The Present report dated 23.09.2021 had been received by the **National Anti-Profitteering Authority (NAA)** from the Applicant

No. 2, i. e. the **Director General of Anti-Profiteering (DGAP)** after a detailed investigation under Rule 129(6) of the CGST Rules, 2017. The brief facts of the case are that the Standing Committee on Anti-profiteering, received an application under Rule 128 of the CGST Rules, 2017, filed by Applicant no. 1 alleging profiteering in respect of construction service supplied by Respondent in his project '**G. K. Pride Phase-II**'.

2. The DGAP in his Investigation Report dated 23.09.2021, had inter-alia, submitted as under: -
 - a. The Applicant No. 1 alleged that the Respondent had not passed on the benefit of ITC to him by way of commensurate reduction in the prices on purchase of a flat in the project "**G.K. Pride Phase-II**" from the Respondent situated at Yapral Village, Alwal Mandal, Medchal-Malkajgiri, Secunderabad, Telangana on introduction of GST w.e.f. 01.07.2017, in terms of Section 171 of the CGST Act, 2017.
 - b. The said application was then examined by the Standing Committee on Anti-profiteering and it was 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 ITC had been passed on by the Respondent to his customers in respect of construction service supplied by him.
 - 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 on 21.05.2021, calling upon the Respondent to reply as to whether he admitted that the benefit of ITC had not been passed on to his customers 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 were also given an opportunity to inspect the non-confidential



evidences/information furnished by the Applicant during the period 28.06.2021 to 02.07.2021. However, the Respondent did not avail this opportunity. The period covered by the current investigation was from 01.07.2017 to 31.03.2019.

- d. Vide e-mail dated 17.09.2021, the Applicant No. 1 was afforded an opportunity to inspect the non-confidential documents/reply furnished by the Respondent. However, the Applicant No. 1 did not avail this opportunity.
- e. The time limit to complete the investigation was 18.09.2021. However, in terms of Notification No. 91/2020 dated 14.12.2020 where, 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 30th day of March, 2021, and where completion or compliance of such action had not been made within such time, then, the time limit for completion or compliance of such action was extended upto the 31.03.2021. Further, Hon'ble Supreme Court of India passed an Order dated 08.03.2021 in Suo Motu Writ Petition (Civil) No. 3 of 2020, wherein, it was stated that "in cases where the limitation would have expired during the period between 15.03.2020 till 14.03.2021, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 15.03.2021. In the event the actual balance period of limitation remaining, with effect from 15.03.2021, was greater than 90 days, that longer period shall apply". The above relief had been extended and the period from 14.03.2021 till further orders shall also stand excluded in computing the limitation period as per the Hon'ble Supreme Court's Order dated 27.04.2021 passed in Miscellaneous Application No. 665/2021 in SMW(C) No. 3/2020.
- f. In response to the Notice dated 21.05.2021, the Respondent submitted partial documents/information vide letters and e-mails dated 14.06.2021, 16.06.2021, 05.07.2021, 10.07.2021,

14.07.2021, 09.08.2021, 26.08.2021, 14.09.2021 and 16.09.2021.

The submissions of the Respondent were given as under: -

- i. M/s GK ARPL was a construction firm and was in the business of construction of residential apartments since 2006 in Telangana State.
 - ii. He was not liable to pay benefit of ITC by way of commensurate reduction in prices as that benefit was already given to his customers by way of GST collecting at 9% instead of 12% and there was no profiteering in respect of construction services as alleged by the Applicant No. 1.
- g. Vide the aforementioned letters & emails, the Respondent and the CGST, Commissionerate, Visakhapatnam submitted the following documents/ information:
- i. Brief Profile of the Respondent.
 - ii. Copies of GSTR-1 returns for the period July, 2017 to February, 2021.
 - iii. Copies of GSTR-3B returns for the period July, 2017 to February, 2021.
 - iv. Copies of GSTR-9 returns for the period FY 2017-18 & 2019-20.
 - v. Electronic Credit Ledger for the period July, 2017 to December, 2020.
 - vi. Copies of Service Tax for the period of October, 2016 to March, 2017 & VAT returns for the period April, 2016 to June, 2016, September, 2016 to June, 2017.
 - vii. Details of applicable tax rates, Pre-GST & Post-GST.
 - 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 March, 2019.
 - ix. Balance Sheet for the FY 2016-17 to FY 2019-20.
 - x. Copy of Agreement/Registry between the land owners and the developer for the project "G. K. Pride Phase-II.
 - xi. GST collected 5% without ITC from 01.04.2019 as per the Notification No. 03/2019 of Central Tax Rate.

- xii. Copy of Occupancy Certificate issued Greater Hyderabad Municipal Corporation.
 - xiii. Copies of sale agreements/contract issue to the Applicant.
 - xiv. List of home buyers in the project "G.K. Pride Phase-II".
 - xv. Details of Input Credit Benefit passed on to the customer explanations.
- h. Vide Notice dated 21.05.2021, the Respondent was informed that if any information/documents were provided on confidential basis, in terms of Rule 130 of the Rules, a non-confidential summary of such information/documents was required to be furnished. However, the Respondent did not submit any such information or summary.
- i. The subject application, various replies of the Respondent/Applicant and the documents/evidences on record were examined. The main issues for determination were: -
- i. Whether there was benefit of reduction in 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,
 - 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.
- j. 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 ITC pertaining to the residential units which were under construction but not sold was provisional ITC which might be required to be reversed by the Respondent, if such units remain unsold at the time of issue of the completion certificate, in terms of Section 17(2) & Section 17(3) of the CGST Act, 2017, which read as under:

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

Section 17 (3) “The value of exempted supply under 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.

- k. The Respondent was a developer and was engaged in construction of building, earlier registered as an assessee with VAT & Service Tax Department, upto 30.06.2017. Thereafter, he was registered with GST department vide Registration No 36AAHFG3822D1ZQ for providing taxable service under the category of construction services. He had received completion certificate on 12.07.2020. The Respondent submitted that he was covered under composition scheme in VAT regime. The Respondent submitted that he had not availed any CENVAT Credit in pre-GST regime. Further in post-GST regime the Respondent had availed the ITC of Rs. 3,12,03,984/- which was

verified from the GSTR-3B returns submitted by the Respondent for the period of July, 2017 to March, 2019.

1. The contention of the Respondent was that the benefit was already passed on to the customers by way of tax collecting at 9% instead of 12% and there was no profiteering in respect of construction services. In this regard, the Respondent had not produced any original demand letters related to collecting of GST @9% instead of @12%. However, the Respondent had not provided any documentary evidence to substantiate his claim. Further, the Respondent had not provided the contact details such as email-id & mobile nos. of the homebuyers. Therefore, no verification of the Respondent claim could had been made. In absence of any such evidence the benefit claimed to had been passed on to the Applicant and other home buyers had not been taken into consideration for calculation of profiteering.
- m. 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 credit of Service Tax paid on the input services (CENVAT credit of Central Excise duty was not available) in respect of the units for the project "**G.K. Pride Phase-II**" sold by them. The Respondent vide e-mail dated 09.08.2021 submitted that he had not claimed the credit of Service tax and VAT. The Respondent had not submitted the copy of Service tax returns for the period April, 2016 to September, 2016 and April, 2017 to June, 2017. 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 March, 2019 the details of the input tax credit/VAT availed by them, his turnover from the project "**G. K. Pride Phase-II**" and the ratio of ITC to turnover, during the pre-GST (April, 2016 to June, 2017) and post-GST (July, 2017 to March, 2019) periods, was furnished in table-A below.



Table-A

Sr.No.	Particulars	Total (Pre-GST) 01.04.2016 to 30.06.2017	Taxable Turnover (01.07.2017 to 31.03.2019)
1	CENVAT of Service Tax Paid on Input Services used for flats (A)	-	-
2	Input Tax Credit of VAT Paid on Purchase of Inputs (B)	-	-
3	Total CENVAT/Input Tax Credit Available (C)= (A+B)	-	-
4	Input Tax Credit of GST Aailed (D)	-	3,12,03,984
5	Turnover for Flats as per Home Buyers List (E)	9,39,57,707	65,58,59,338
6	Total Saleable Area (in SQF) (F)	4,62,115	4,62,115
7	Total Sold Area (in SQF) relevant to turnover (G)	64,952	2,94,549
8	Relevant ITC [(H)= (D)*(G)/(F)]	0	1,98,89,210
Ratio of ITC Post-GST [(I)=(H)/(E)]		0.00%	3.03%

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 0.00% and during the post-GST period (July, 2017 to March, 2019), it was 3.03% in Project "G. K. Pride Phase-II". Though the investigation period was July, 2017 to February, 2021, the period upto March, 2019 instead of February, 2021 had been considered for computation of the profiteering because the Respondent had opted for new scheme issued vide Notification 03/2019-Central Tax (Rate) dated 29.03.2019. In terms of this Notification the Respondent was required to pay GST @ 5% without taking/availing the benefit of ITC the same had been verified from GST return. Thus, the Respondent was not eligible to avail the ITC w.e.f. 01.04.2019. Since, there was no



benefit of ITC to the Respondent w.e.f. 01.04.2019, profiteering on account of additional benefit of ITC cannot be attributed after 01.04.2019. This clearly confirms that post-GST, the Respondent had benefited from additional ITC to the tune of 3.03% [3.03% (-) 0.00%] 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- 'A' above, the comparative figures of the ratio of ITC availed/available to the turnover in the pre-GST and post-GST periods as well as the turnover, the recalibrated base price and the excess realization (profiteering) during the post-GST period, was tabulated in Table-B below.

Table-B

Sr. No.	Particulars		
1	Period	A	July, 2017 to March, 2019
2	Output GST rate (%)	B	12
3	Ratio of CENVAT credit/ ITC to Total Turnover as per table - 'B' above (%)	C	0.00%/3.03%
4	Increase in ITC availed post-GST (%)	D= 3.03% less 0.00%	3.03%
5	<u>Analysis of Increase in input tax credit:</u>		
6	Base Price raised during July, 2017 to March, 2019 (Rs.) (Nett of cancellation)	E	65,58,59,338
7	GST raised over Base Price (Rs.)	F= E*B	7,87,03,121
8	Total Demand raised	G=E+F	73,45,62,459
9	Recalibrated Base Price	H= E*(1-D) or 96.97% of E	63,59,86,800
10	GST @12%	I = H* B	7,63,18,416


11	Commensurate demand price	J = H+I	71,23,05,216
12	Excess Collection of Demand or Profiteering Amount	K= G-J	2,22,57,242

- p. From table- 'B' above, it was clear that the additional ITC of 3.03% of the turnover should had resulted in the commensurate reduction in the base price as well as cum-tax price. Therefore, in terms of Section 171 of the CGST Act, 2017, the benefit of such additional ITC was required to be passed on to the recipients.
- q. On the basis of the aforesaid CENVAT/input tax credit availability pre and post-GST and the details of the amount collected by the Respondent from the Applicant No. 1 in respect of the flats sold by the Respondent during the period 01.07.2017 to 31.03.2019, explained at table 'B' above, it was evident that the benefit of ITC that needed to be passed on by the Respondent to the buyers of flats comes to Rs. 2,22,57,242/- which included 12% GST on the base amount of Rs. 1,98,72,538/-. The home buyers and unit no. wise break-up of this amount was given. This amount was inclusive of profiteered amount of Rs 1,22,547/- (including GST) in respect of Applicant No. 1.
- r. 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 Telangana only.
- s. From the above discussion, it appeared that the benefit of additional ITC to the tune of 3.03% 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 have been contravened by the Respondent, in as much as the additional benefit of ITC @3.03% of the base price received by the Respondent during the period 01.07.2017 to 31.03.2019, had not been passed on



by the Respondent to the Applicant No. 1 and 158 other recipients. On this account, it was summoned up that the Respondent had realized an additional amount to the tune of Rs. 2,22,57,242/- inclusive of 12% GST (Rs. Two Crore Twenty Two Lakh Fifty Seven Thousand Two Hundred and Forty Two only) had not been passed on to the Applicant No. 1 and 158 other recipients. These 158 recipients are identifiable as per the documents provided by the Respondent, giving the names along with unit allotted to such recipients. As discussed earlier, the Respondent had supplied construction services in the State of Telangana only.

- t. As aforementioned, the present investigation covers the period from 01.07.2017 to 31.03.2019. In terms of the Notification 03/2019-Central Tax (Rate) dated 29.03.2019 the Respondent was required to pay Tax/GST @ 5% without taking/availing the benefit of Input Tax Credit. Thus, the Respondent was not eligible to avail the ITC w.e.f. 01.04.2019 and Section 171 of CGST Act, 2017 was not attracted from 01.04.2019.
- u. In view of the aforementioned findings, it was concluded 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 ITC shall be passed on to the recipient by way of commensurate reduction in prices”, had been contravened in the present case.
- v. Any reference to the CGST Act, 2017 and Central Goods and Services Rules, 2017 shall also include a reference to the corresponding provisions under the relevant SGST/UTGST/IGST Acts and Rules.

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- 3. 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, the above Report dated 23.09.2021 was

carefully considered by this Authority and a Notice dated 25.02.2022 was issued to the Respondent to explain why the Report dated 23.09.2021 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 08.04.2022 wherein the Respondent had, inter-alia submitted following: -

- i. *Declaration of management that, he had sold flats to the customers and received the sales consideration after passing the GST ITC benefit. The Company had given the GST ITC benefit by way of collecting @9% GST instead of @12% GST on flat cost. In this regard, he had offered the Authority to confirm with customers directly, he didn't have any objections for taking cross confirmation with customers*
- ii. *Calculation of GST with types name and address statement to any queries contact Mr. Satish Reddy Audition.*

4. Copy of the above submissions dated 08.04.2022 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 10.05.2022 on the Respondent's submissions and, inter-alia clarified: -

- a. The Respondent provided 112 email id's out of total 159 buyers and the DGAP had e-mailed 112 buyers on 02.05.2022 & 06.05.2022 seeking confirmation as to whether the Respondent had passed on the benefit of ITC by way of collecting @9% GST instead of @12% GST on flat cost to buyers. Out of these 112 buyers, 15 buyers had replied the e-mail. 11 buyers had confirmed payment of GST @9%. However, one buyer confirmed of GST @9%, but stated that ITC benefit had not been passed on to him and one buyer informed that he was unaware about Input Tax Credit. 3 buyers were unclear about the rate of



GST charged and 1 buyer had denied the claim of the Respondent.

5. In the meanwhile, the Applicant No. 1 had filed his submission vide email dated 23.05.2022 to the above submission of the Respondent, submitted as under:-
- i. It was correct that GST was collected @9% instead of 12% by the builder. This was already mentioned in his petition and the DGAP Report.
 - ii. Even considering his plea that he had collected GST @9% and raised demand @9% (?), he still profited by approximately Rs. 2.16 crores. He also attached his Calculation sheet. If the Respondent raised demand @12% but collected @9%, his profiteering further increases.
 - iii. Even this 9% GST collected had resulted in increase in price by Rs. 89,627/- to the Applicant No. 1 as a customer which was supposed to be compensated through ITC received by the builder, by reducing the base price. This had not happened.
 - iv. The claim of the builder that charging GST discounted by 3% was same as passing complete ITC was flawed because he had still availed ITC to the tune of 3.12 crores.
 - v. The correct way was to collect GST @12% and pass on to the customers the entire ITC as received. It needed to be ascertained if there was mala-fide intent in following the incorrect way. It was also pertinent to check if demand at higher rate of GST (12%) was raised by the builder in his returns with an intention to avail more ITC.

Calculation as submitted by the Applicant No. 1

<u>Demand raised by @9%, GST collected @9%</u>		
Base price raised w.e.f. July 2017	₹	655,859,338
GST raised over base price @9%	₹	59,027,340
Total demand raised	₹	714,886,678

Recalibrated base price, reduced by 3.03%	₹ 635,986,800	
GST @9%	₹ 57,238,812	
Commensurate demand price	₹ 693,225,612	
Excess collection of demand or profiteering	₹ 21,661,066	
<u>Demand raised by @12%, GST collected @9%</u>		
Base price raised wef Jul 2017	₹ 655,859,338	
Gst raised over base price @12%	₹ 78,703,121	
Total demand raised	₹ 734,562,459	
Recalibrated base price, reduced by 3.03%	₹ 635,986,800	
Gst @9%	₹ 57,238,812	
Commensurate demand price	₹ 693,225,612	
Excess collection of demand or profiteering	₹ 41,336,846	Limited to ITC availed

6. Copy of the DGAP's clarifications dated 10.05.2022, was supplied to the Respondent to file his re-joinder. In response, the Respondent vide his rejoinder dated 30.06.2022, submitted as under: -

- i. Regarding DGAP's claim that email IDs of all home buyer were not available and few of them were not aware of GST etc, he had sent all email IDs which were available with in his records and those were more than 70% of flat buyers. He also declared that tax was collected from home buyers only after passing on the benefit of ITC.
- ii. Regarding the ITC benefit passed on to the buyers, he already submitted information how he had given the ITC benefit to the buyers. Few buyers might had replied unknowingly as ITC benefit not received but he could prove that the company had passed on the eligible ITC to buyers which could be proved from booking sheets/application forms and other records, etc.
- iii. Amount mentioned by Mr. Nitin Kumar Joshi, i.e. Applicant No. 1 in his letter dated 23.05.2022, as base price raised w.e.f. July, 2017 from him was Rs.65,58,59,338/-, however, this amount was not base price. It was gross amount (i. e. including tax GST @9%) collected from customers and which could be evident from his books of accounts which was already submitted and also calculation given by the Applicant No. 1 was not correct.



7. Personal hearing in the matter was held on 07.07.2022, wherein, the Respondent and the Applicant No. 1 had re-iterated their written submissions. Consequent to the hearing, the Respondent had filed his final submissions dated 20.07.2022, wherein, he has inter-alia submitted as under: -
- i. He has passed on the benefit of ITC to his homebuyers as per the Table A of the DGAP's report.
 - ii. In respect of the fact that the cost increased by Rs. 89,617/- for Applicant No. 1 after the implementation of GST, the same was increased only due to the increase in rate of taxes by the Govt, as earlier in VAT regime, he was covered under the composition scheme and at that time, rate of taxes was lower than the GST regime even after passing on the benefit of ITC.
 - iii. He had informed all his homebuyers regarding GST collected only after passing on the benefit of ITC.
 - iv. The Respondent also submitted the Mobile Nos. and Email IDs of the remaining homebuyers, sample booking applications.
 - v. The project had total 232 plots out of which details of buyers of 159 plots was already submitted and details of remaining 73 buyers was also submitted, some which were sold before GST and the others which were sold after 31.03.2019.
8. We have carefully considered the Report furnished by the DGAP, the clarifications filed by him and the records of the case. Section 171 of the CGST Act, 2017 provides that any reduction in the rate of tax on any supply of goods or services or benefit of Input Tax Credit shall be passed on to the recipient by way of commensurate reduction in prices. In the instant case, there is no reduction of rate of tax during the relevant period and the only issue which is required to be decided by the Authority as to whether Respondent is required to pass on the benefit of Input Tax Credit. As mentioned in earlier paragraphs, DGAP has carried out investigation in the subject matter and collected relevant information/evidences from the Respondent and after the analysis of the same the DGAP has come to a conclusion that the Respondent has gained benefit of ITC on the



supply of Construction services after the implementation of GST w.e.f. 01.07.2017 and the Respondent was required to pass on such benefit to the homebuyers by way of commensurate reduction in prices in terms of Section 171 of the CGST Act, 2017 during the period 01.07.2017 to 31.03.2019. The DGAP has calculated that an amount of benefit of ITC not passed on to the recipients or in other words, the profiteered amount comes to Rs. 2,22,57,242/- which includes 12% GST on the base profiteered amount of Rs. 1,98,72,538/- in respect of the Applicant No. 1 and 158 other homebuyers. Further, it is submitted by the Respondent that he had already passed on substantial amount of GST ITC to the homebuyers in accordance with the requirements of Section 171 of the CGST Act, 2017 by collecting GST @9% instead of @12% from the homebuyers and the Respondent had submitted his declaration that he had collected GST @9% instead of 12% and Mobile No. & Email IDs of the homebuyers. Further, the DGAP has submitted that to cross check the claim of the Respondent, e-mails were sent to 112 homebuyers (whose Email IDs were provided by the Respondent) out of the total of 159 homebuyers, out of which, 15 buyers had replied. 11 homebuyers had confirmed to have paid GST @9%, 3 homebuyers were unclear, 1 homebuyer had confirmed paying GST @9% but also submitted that the benefit of ITC was not passed on to him and 1 homebuyer had denied the Respondent's claim. The period of investigation covers the period from 01.07.2017 to 31.03.2019. The Respondent opted for new scheme as per Notification no. 03/2019-Central Tax (rate) dated 29.03.2019, vide which he was required to pay GST @5% without taking/availing the Input Tax Credit, and therefore, Section 171 of the CGST Act, 2017 is not attracted w.e.f. 01.04.2019.

9. In view of the above facts, the Authority finds that the benefit of additional Input Tax Credit of 3.03% of the turnover has accrued to the Respondent for the project "G K Pride Phase-II". This benefit was required to be passed on to the recipients. Thus, Section 171 of the CGST, 2017 has been contravened by the Respondent, inasmuch

as the additional benefit of ITC @3.03% of the base price received by the Respondent during the period 01.07.2017 to 31.03.2019, was required to be passed on by the Respondent to 159 recipients including the Applicant no. 1. These recipients are identifiable as per the documents provided by the Respondent, giving the names and addresses along with Unit no. allotted to such recipients.

10. It is pertinent to mention here that the Respondent has contested the calculation done by the DGAP for quantification of the amount of profiteering. The Respondent has submitted that the amount of total base price raised during July, 2017 to March, 2019 has been taken as Rs. 65,58,59,338/- excluding GST. However, the amount of Rs. 65,58,59,338/- is his total amount raised during the said period including GST. To verify his claim, we have gone through the calculation sheet submitted by the DGAP in this case, wherein, it is observed that the amount received from July, 2017 to march, 2019 has been taken as 65,58,59,338/-, however, the GST has been taken as Rs. 5,41,53,523.31/- @9%. Hence, the amount of Rs. 7,87,03,121/- taken as GST raised over base price in the table B, could not be found anywhere in the DGAP's calculations.
11. In view of the above facts, the Authority finds that the DGAP's calculation of amount of profiteering might be erroneous and require recalculation. Hence, the DGAP is directed to recalculate the base prices and the amount of profiteering thereof under Rule 133(4) of the CGST Rules, 2017 strictly in respect of the findings made in para 10 above.
12. 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.”


13. 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


(Rajarshi Kumar)
Secretary, NAA



File No. 22011/NAA/GK-ARPLVenture/70/2021
Copy To:-

Dated: 30.09.2022

1. M/s GK ARPL Ventures, 35-69, GK Colony, Sainikpuri Post, Secunderabad-500094.
2. Sh. Nitin Kumar Joshi, Block-6, 302, GKS Pride, Balajinagar Road, Yapral, Hyderabad-500087.
3. Director General Anti-Profiteering, Central Board of Indirect Taxes & Customs, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.
4. Guard File.