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

I.O. No.	:	22/2022
Date of Institution	:	24.09.2021
Date of Order	:	29.09.2022

In the matter of:

1. Smt. Rekha Gamaprasad Yadav, 4A-1305, Dream Complex, Station Road, Bhandup West, Mumbai-400078.
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 Rushi Builder and Developers, B-15 Society No. 30, Amita Co-operative Society Ltd., SYP Nagar, Mhada, Andheri West, Mumbai-400053.

Respondent

Quorum:-

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

Present: -

1. Sh. Satyavijay Gamaprasad Yadav for the Applicant No 1.
2. Sh. Satender Dhindhal, Superintendent for the DGAP.
3. Sh. Bharat Raichandani, Advocte, Sh. Mitesh Rajgor, Chartered Accountant and Sh. Deepak Patel, Partner for the Respondent.

ORDER

1. The Present Report dated 23.09.2021 had been received in National Anti-Profiteering Authority (**NAA** or **Authority**) from the Applicant No. 2 i.e. the Director General of Anti-Profiteering (**DGAP**) after a detailed investigation under Rule 128 of the Central Goods & Service Tax (**CGST**) Rules, 2017, on the complaint of the Applicant No. 1 alleging profiteering by the Respondent in respect of purchase of Flat No. 701 & 702, in the project "Shiv Bliss", situated at L.B.S Marg, Bhandup (W) Mumbai- 400078. The Applicant No. 1 alleged that the Respondent had not passed on the benefit of ITC to her by way of commensurate reduction in the price.

2. The DGAP vide his Report dated 23.09.2021 had *inter-alia* submitted the following points :-

   a. The Maharashtra State Screening Committee on Anti-profiteering examined the said complaint and forwarded it with his recommendation to the Standing Committee on Anti-profiteering for further action, in terms of Rule 128 of the Rules.

   b. The aforesaid reference was examined by the Standing Committee on Anti-profiteering in its meeting held on 26.05.2020. The minutes of meeting were received by the DGAP on 03.06.2020, whereby it was decided to forward the same to the DGAP, to conduct a detailed investigation in the matter.

   c. On receipt of the reference from the Standing Committee on Anti-profiteering on 03.06.2020, a Notice under Rule 129 of the CGST Rules, 2017 was issued by the DGAP on 01.07.2020, calling upon the Respondent to reply as to whether he admitted that the benefit of ITC had not been passed on to the Applicant No. 1 by way of commensurate reduction in price and if so, to *suo moto* determine the quantum thereof and indicate the same in his reply to the Notice as well as furnish all the supporting

documents. Further, in the said Notice dated 01.07.2020, the Respondent was given an opportunity to inspect the non-confidential evidences/information submitted by the Applicant No. 1, during the period 14.07.2020 to 15.07.2020. The Respondent did not avail of the said opportunity.

d. In response to the Notice dated 01.07.2020 and several reminder letters dated 23.07.2020, 17.08.2020, 02.09.2020, 01.10.2020, 06.07.2021 & 20.07.2021, the Respondent did not submit all the requisite documents on the due date. Hence, two Summonses dated 09.11.2020 & 09.02.2021 under Section 70 of the CGST Act, 2017 read with Rule 132 of the Rules, were issued to the Respondent to submit all the relevant documents.

e. In compliance to said summonses, the Respondent did not submit all the requisite documents and therefore letters dated 07.12.2020, 15.12.2020 and 09.02.2021 were sent to the jurisdictional office to collect all the relevant documents from the Respondent and forward the same to the DGAP. However, no reply/documents were received from the jurisdictional office. Thereafter, D.O. letter dated 22.02.2021 from the DGAP was sent to the Principal Chief Commissioner, CGST Mumbai Zone to direct the Commissioner, CGST, Thane to collect the requisite documents from the Respondent and forward the same to the DGAP. Vide e-mail dated 24.03.2021 requisite documents were received from jurisdictional office.

f. The period covered by the current investigation was from 01.07.2017 to 31.05.2020

g. The time limit to complete the investigation was 02.12.2020. However, due to prevalent pandemic of COVID-19 in the country, vide Notification No. 65/2020- Central Tax dated 01.9.2020 which was further amended vide Notification No. 91/2020 dated 14.12.2020, it was extended upto 31.03.2021. Further, the Hon'ble Supreme Court of India passed an Order

dated 08.03.2021 in *Suo Moto* Writ Petition (Civil) No. 3/2020, wherein, it was stated that *"in cases where the limitation would had expired during the period between 15.03.2020 till 15.03.2021, notwithstanding the actual balance period of limitation remaining, all persons shall had 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.

h. In response to the Notice dated 01.07.2020, the Respondent replied vide letters/emails dated 27.07.2020, 28.08.2020, 21.09.2020, 18.10.2020, 27.11.2020, 28.12.2020, 29.12.2020, 01.03.2021, 07.03.2021, 08.03.2021, 19.03.2021, 31.03.2021, 21.04.2021, 10.07.2021, 27.07.2021 and 21.09.2021. The Respondent submitted that the project "Shiv Bliss" had ground plus 20 floors and the construction was completed upto 20th floor, however the Occupancy Certificate was received only for 3rd floor to 17th floor. Further, the Respondent stated that he had total number of 174 units in the project, out of which 133 were sold as on 31.05.2020 and 41 were unsold.

i. Vide the aforementioned letters/e-mails, the Respondent submitted the following documents/information:
   i. Brief profile of the Respondent.
   ii. Copies of GSTR-1 and GSTR- 3B Returns for the period 01.07.2017 to 31.05.2020.
   iii. Copies of VAT & ST-3 Returns for the period April, 2016 to June, 2017.

iv. Copy Sale Agreement/Contract issued to the Applicant No. 1.

v. Tax rates - pre-GST and post-GST.

vi. Copy of Balance Sheet (including all Annexures and profit/loss account) and Cost Audit Report for FY 2016-17, FY 2017-18 & 2018-19.

vii. Copy of Electronic Credit Ledger for the period 01.07.2017 to 31.05.2020.

viii. CENVAT/ITC Register for the period April, 2016 to June, 2017 and July, 2017 to May,2020.

ix. Details of VAT, Service Tax, ITC of VAT, CENVAT credit for the period April, 2016 to June, 2017 and output GST and ITC for the period July, 2017 to May,2020 for the project "Shiv Bliss".

x. List of home buyers in the project "Shiv Bliss".

xi. Status of project in terms of sold and unsold units as on 31.05.2020.

j. The Respondent submitted that all the details/ information/ submissions made by him were to be treated as confidential in terms of Rule 130 of the CGST Rules'2017, except the documents mentioned below: -

i. Demand letters & sale agreement issued to the Applicant No. 1.

ii. Details of applicable tax rates pre-GST & post GST.

iii. RERA project report.

iv. Status of the project.

v. Brief Profile of the Respondent.

k. Vide e-mail dated 06.07.2021, the Applicant No. 1 was given an opportunity to inspect the non-confidential evidences/reply furnished by the Respondent on 15.07.2021 or 16.07.2021. The Applicant No.1 availed the said opportunity on 16.07.2021 and

inspected the non-confidential documents submitted by the Respondent.

l. The reference received from the Standing Committee on Anti-profiteering, various replies of the Respondent and the documents/evidences on record had been carefully scrutinised. The main issues for determination were:

i. Whether there was benefit of reduction in the rate of tax or ITC on the supply of Construction Service by the Respondent on implementation of GST w.e.f. 01.07.2017 and if so,

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

m. 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 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 and commercial shops which was under construction but not sold was provisional ITC which might be required to be reversed by the Respondent if such units remain unsold at the time of issue of the Completion Certificate, in terms of Section 17(2) & Section 17(3) of the CGST Act, 2017, which read as under:

Section 17 (2) "Where the goods or services or both was used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act and partly for effecting 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 price of such units to be sold to the prospective buyers by considering the net benefit of additional ITC available to him post-GST.

n. 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 "Shiv Bliss" sold by him. The Respondent was not eligible to avail ITC of VAT paid on the inputs/purchases as he had opted for Composition Scheme under VAT. 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 01.04.2016 to 31.05.2020, the details of the ITC availed by him, turnover from the Respondent's project "Shiv Bliss" the ratios of Cenvat Credits/ITCs to turnovers, during the pre-GST (01.04.2016 to 30.06.2017) and post-GST

(01.07.2017 to 31.05.2020) periods, has been furnished in table-'A' below:-

Table- 'A' (Amount in Rs.)

Sr. No.	Particulars	Total (Pre-GST) 01.04.2016 to 30.06.2017	Total (Post GST) (01.07.2017 to 31.05.2020
1	CENVAT of Service Tax Paid on Input Services used for units (A)	1,24,61,086	0
2	Input Tax Credit of GST(B)	0	2,94,39,571
3	Total CENVAT/Input Tax Credit Available (C)= (A+B)	1,24,61,086	2,94,39,571
4	Turnover for Flats as per Home Buyers List (D)	45,83,18,520	27,37,47,404
5	Total Saleable Area (in SQF) (E)	95,452	95,452
6	Total Sold Area (in SQF) relevant to turnover (F)	53,971	66,487
7	Relevant ITC [(G)= (A or B)*(F)/(E)]	70,45,816	2,05,06,105
Ratio of ITC Post-GST [H=(G)/(D)*100]		**1.54%**	**7.49%**

*The Respondent claimed that Rs. 63,39,788/- should be deducted from total Cenvat Credit available during the period 01.04.2016 to 30.06.2017 from computation of profiteering as the said amount was asked to be reversed by the Service Tax Audit Department as it was not related to construction of Slum Rehabilitation Authority (**SRA**), Mumbai project. On perusal of the documents provided, it appeared the claim of the Respondent was correct and thus, the DGAP has considered the claim of the Respondent and the NET Cenvat Credit available to the Respondent during the period 01.04.2016 to 30.06.2017 was taken as Rs. 1,24,61,086/- (1,88,00,874 - 63,39,788).

o. From the above table- 'A', it was evident that the ITC as a percentage of the turnover that was available to the Respondent during the pre-GST period (01.04.2016 to 30.06.2017) was 1.54% and during the post-GST period (01.07.2017 to 31.05.2020), it was 7.49% for the Project "Shiv Bliss". It confirmed that post-GST, the Respondent had benefited from

additional ITC to the tune of 5.95% [7.49% (-) 1.54%] of the turnover.

p. It was observed that 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 ratios of Cenvat credit/ ITC availed/available to the turnover 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, is tabulated in table-'B' below:-

Table-'B'

Sr. No.	Particulars		
1	Period	A	01.07.2017 to 31.05.2020
2	Output GST rate (%)	B	12
3	Ratio of CENVAT credit to Total Turnover in pre-GST period as per Table - 'A' above (%)	C	1.54%
4.	Ratio of ITC to Total Turnover for the period 01.07.2017 to 31.05.2020 as per Table - 'A' above (%)	D	7.49%
4	Increase in ITC availed post-GST (%)	E= 7.49% *less* 1.54%	5.95%
5	Analysis of Increase in ITC:		
6	Demand raised/Advances received during 01.07.2017 to 31.05.2020 (Rs.)	F	27,37,47,404
9	GST raised over Base Price (Rs.)	G= F*B	3,28,49,688
10	Total Demand raised	H= F+G	30,65,97,092
11	Recalibrated Base Price	I= F*(1-E) or 94.05% of F	25,74,59,433
12	GST @12%	J = I* B	3,08,95,132
13	Commensurate demand price	K= I+J	28,83,54,565
14	**Excess Collection of Demand or Profiteering Amount**	**L= H-K**	**1,82,42,527**

q. It was evident from the above calculation explained in Table-'B' that, the benefit of ITC that needed to be passed on by the Respondent to the buyers of flats came to Rs. 1,82,42,527/- which included 12% GST on the base amount of Rs. 1,62,87,971/-. This amount was inclusive of profiteered amount of Rs. 8,75,301/- (including GST) in respect of Applicant No. 1 (Flat No. 701 & 702).

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 Maharashtra only.

s. From the above discussion, it was found that the benefit of additional ITC to the tune of 5.95% of the turnover, accrued to the Respondent in post-GST period, was required to be passed on by the Respondent to his recipients. Section 171 of the CGST Act, 2017 had been contravened by the Respondent in as much as the additional benefit of ITC @5.95% of the base price received by the Respondent during the period 01.07.2017 to 31.05.2020, had not been passed on to the recipients including the Applicant No. 1. On this account, the Respondent had realized an additional amount to the tune of Rs. 1,82,42,527/- (including GST), which was inclusive of profiteered amount of Rs. 8,75,301/- (including GST) in respect of the Applicant No. 1. The Applicant No. 1 and other recipients were identifiable as per the documents provided by the Respondent indicating the names and address along with unit nos. allotted to such recipients.

t. As aforementioned, the present investigation covered the period from 01.07.2017 to 31.05.2020. Profiteering, if any, for the period post May, 2020, had not been examined as the exact quantum of ITC that would be available to the Respondent in

future could not be determined at this stage, when the construction of the project was yet to be completed.

u. It was concluded by the DGAP 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.

3. The above Report of the DGAP 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 09.04.2022, wherein the Respondent had submitted that:-

a. The Report of the DGAP proceeded on an incorrect factual as well as legal basis. The Respondent denied and countered each and every allegation made in the said Report and nothing that was stated in the Report was admitted or deemed to have been admitted unless so specifically admitted in the said reply. Hence, the above report was liable to be dropped.

b. That entire investigation was wholly without jurisdiction. Section 171 of CGST Act, 2017 requires the supplier to pass the benefit when there was reduction in rates or benefit of input credit availed by the supplier. In instant case, there was no reduction in rates. This fact was not in dispute. With regards to benefit of ITC, it means ITC as defined under section 16 of CGST Act, 2017. Section 171 of the CGST Act, 2017 was introduced to take care of Anti-profiteering pursuant to introduction of GST. Benefit of ITC which was not available in erstwhile law was available now. There was no case here. Therefore, Section 171 of CGST Act, 2017 didn't apply.

Therefore, the entire proceedings were wholly without jurisdiction.

c. That computation of credit claimed/availed in pre-GST was incorrect.

i. The Respondent claimed Cenvat Credit of Rs. 1,88,00,874/- during pre-GST period i.e. (01.04.2016 to 30.06.2017). However, the DGAP had excluded the credit of Rs. 63,39,788/- claimed by the Respondent while calculating the total Cenvat credit claimed in pre-GST era.

ii. At Para 15, the Report alleged that the aforesaid credit was deducted on the Respondent's request. The same was made as the Respondent was asked to reverse it by the Service Tax Audit department as it was not related to construction of SRA project.

iii. The Respondent submitted that Rs. 63,39,788/- related to payment made by the Respondent after it was pointed out by Service Tax Audit department that it was in relation to construction of SRA project where Service Tax Audit department had treated that the Respondent had provided Construction Service to SRA. Payment of Rs. 63,39,788/- did not form part of Rs. 1,88,00,874/- claimed/availed by the Respondent in Pre-GST period. Hence, the Report erred in deducting Rs. 63,39,788/- from Credit availed in Pre-GST era.

iv. The Respondent was entitled for whole credit of Rs. 1,88,00,874/- during pre-GST period 01.04.2016 to 30.06.2017. From above points it could be seen that the credit availed by the Respondent was in relation to construction of SRA project.

v. The Report did not consider the credit claimed prior to 31.03.2016. The Respondent submitted that prior to 31.03.2016, he had claimed and availed credit of Rs. 52,42,335/-. However, the same did not form part of the Table 'A'.

vi. Once the Cenvat credit of Rs. 1,15,82,123/- (Rs. 63,39,788/- + Rs. 52,42,335/-) forms part of the calculation, the ratio of Cenvat credit in pre-GST jumps to more than 4.64%. Hence, the calculation made under aforesaid Report, to the above extent, must be revised.

vii. Without Prejudice, the Respondent submitted that the DGAP in terms of Section 171 of the CGST Act, 2017 had no jurisdiction to decide the eligibility of credit claimed under erstwhile Service Tax law. The denial of credit of Service Tax on the allegation of non-taxability was beyond the scope of provisions of Section 171 (1) of CGST Act, 2017. The Anti-Profiteering measures were meant to be used sparingly in the cases of blatant profiteering. The Anti-Profiteering provisions could not be extended to cover situations which were not expressly contemplated by the section.

viii. In any case, assuming without admitting, that the Respondent was not eligible for the Cenvat Credit claimed on Service Tax paid by the Respondent or the same did not part of the SRA project, the Respondent submitted that the same was availed in pre-GST era. Hence, the price of units sold in pre-GST era was determined after considering the amount of Cenvat Credit claimed. Thus, the same needed to be part of the calculation to arrive the correct ratio of Cenvat credit claimed in pre-GST era.

ix. The report proceeded on the assumptions and presumptions. The report presumes that there was no change in cost, no cost was incurred on specific units and there was no change in rate of tax on inputs. The report had not led in any evidence, lest substantial evidence, in support of its allegations. The Respondent submitted that there was around 15% increase in cost per square feet.

x. Availment of additional ITC did not conclude that the additional benefit had accrued. Additional ITC could accrue because of various factors such as increase in cost of inputs or increase of rate of tax on such inputs etc. Thus, computing the benefit derived on basis of comparing the ratio of ITC/Cenvat credit claimed in pre-GST era and post GST was incorrect. Illustration for the same was explained below:

Pre-GST era

Cost of inputs	100
Rate of tax	12%
Cenvat credit	12

Post GST

Cost of inputs	100
Rate of tax	28%
ITC	28

Post GST

Cost of inputs	125
Rate of tax	12%
ITC	19.375

d. That the report was vague and cryptic. Hence, the report was liable to be dropped:-

i. The above report was vague and beyond comprehension and hence, the present report was liable to be withdrawn. The DGAP computed the alleged benefits based on the period covered under investigation and did not cover the

entire tenure of the project or time of receipt of occupancy/completion certificate. The benefit of the tax credit, treated as profiteering, had been broadly computed by applying the ratio of such differential credit to the post-GST turnover. This methodology, however, seeks to compute benefit to be passed on to various customers on an average basis and without considering various factors such as the stage of construction at which a contract with a particular customer was entered, schedule for milestone payments, change in rate of tax on procurements in pre and post GST regime, etc.

ii. The Respondent was dealing in residential and commercial units. However, the calculation made under Table 'A' was general for all units. The Respondent submitted that there was no sale of commercial units pre-GST. Once, this was the case, invocation of Section 171 for sale of commercial units could not be made. Hence, amount pertaining to same should be excluded for calculation of ratio of input tax. Thus, Section 171 of the Act might be invoked only for sale of residential units.

iii. The Respondent submitted that in terms of Section 17 (2) and Section 17 (3) of the CGST Act, 2017, the Respondent was required to reverse the proportionate ITC to the extent of flats sold after receipt of Completion Certificate. This would have considerable implication on the credit availed by the Respondent. Hence, the actual benefit, if any, could be determined only at the stage of the receipt of Completion Certificate.

iv. Without prejudice, the Respondent submitted that he had availed credit in Form GSTR 3B on the assumption that all the suppliers had paid the tax to the government and had filed returns in Form GSTR 3B and Form GSTR 1.

However, there was possibility that a supplier might not file his return and hence, the credit would not be auto-populated in the Respondent's Form GSTR 2A. Thus, this fact needed to be considered before computing benefit of ITC accrued to the Respondent.

v. At Para 12 of the DGAP's Report, allegations were made that the Respondent had not provided Demand Letters and his profile. The Respondent submitted that the above statement was incorrect as the same were provided.

vi. Further, Rule 129(5) requires the DGAP to make available all evidences to the Respondent. The Application filed by the Applicant No. 1 had not been provided to the Respondent. Further, the Report submitted by the State Screening Committee to Standing Committee had also not been provided to the Respondent. The Respondent submitted that the said complaint was fake, motivated and a malafide complaint. No such verification had been done. There had been no examination of Applicant No. 1 and therefore entire proceedings were bad in law. The Respondent requested the aforesaid documents vide his preliminary reply. However, the same were not provided.

vii. For reasons mentioned above, the Respondent submitted that the report requiring him to pass on the alleged benefit of ITC amounting to Rs. 1,82,42,527/- should be withdrawn.

4. Copy of the above submissions dated 09.04.2022 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 clarification dated 04.05.2022 vide supplementary Report dated 23.09.2021 and clarified that:-

A. For the contention raised by the Respondent that the DGAP's report proceeded on an incorrect factual as well as legal basis, the DGAP clarified that the contention of the Respondent was wrong as the findings of the DGAP's Report were based on the data furnished by the Respondent including the home buyers list.

B. For the contention raised by the Respondent that section 171 of the CGST Act, 2017 did not apply, the DGAP has clarified that under the provisions of Section 171, the Authority had been mandated to ensure that both the benefits of tax rate reduction and ITC, which were the sacrifices of precious tax revenue made from the stake of the Central and State Governments were passed on to the end consumers who bear the burden of tax. The intent of the provision was the welfare of the consumers who were voiceless, unorganized and vulnerable. Therefore, the profiteering was to be at the customer level. The DGAP and the Authority have been charged with the responsibility of ensuring that both the above benefits were passed on to the general public and no undue profit was retained by the supplier.

It was a case of accrual of additional benefit of ITC on account of introduction of GST. Further, Section 171 (1) of the CGST Act, 2017 states that *"Any reduction in rate of tax on any supply of goods or services or the benefit of ITC shall be passed on to the recipient by way of commensurate reduction in prices"*. It was clear from the perusal of the above provision that it mentions *"benefit of ITC shall be passed on to the recipient"* which does not mean that the benefit of ITC was to be restricted to the customers/home buyers of pre-GST regime.

In the investigation, the quantum of relevant credit available during the pre and post GST periods was taken on the basis of submission of the Respondent for working out additional benefit of ITC to the Respondent. Furthermore, in the cases of benefit of ITC in GST the availability of ITC in pre and post GST regimes had to be examined and compared. Without doing so, it would not serve the intent of the Statute. Therefore, the practice of comparing pre and post GST prices and ITC availability was justified and correct. Further, as stated above every recipient/customer was entitled to receive the due benefit of ITC from the supplier.

C. For the contentions raised by the Respondent regarding the computation of credit claimed/availed in pre-GST was incorrect, the DGAP has clarified that the Cenvat credit of Rs 63,39,788/- was excluded from the total Cenvat credit claimed in the pre-GST period only at the instance of the Respondent. During the course of the investigation, majority of the documents/data in respect of the Respondent was received through the jurisdictional Commissionerate. On 24.03.2021 some data of the Respondent was received by the DGAP in which there was an enclosure marked as "Annexure-2" of Report dated 23.09.2021. In this document, the Respondent himself submitted:-

> *"During Service tax audit conducted by Department, an Audit Officer had pointed the reversal of Service Tax credit which was availed during 2013-14 to 2017-18 (Upto June, 2017) as per rule 6(3) of Service Tax. The department had finally while passing the Audit conclusion, demanded and issued a Shaw Cause Notice showing demand of Rs. 63,39,788/- for the reason being not given Cenvat related to construction of*

SRA project... Finally, we request you that kindly reduce the Service Tax credit amount as disallowed by department from the above table, as we was not reversed the same from above table due to column had not specified in your annexure."

In light of the above submission of the Respondent the Cenvat credit amount of Rs. 63,39,788/- was excluded while calculating the total Cenvat credit claimed by the Respondent in the pre-GST regime. What the Respondent had furnished in C-3 was in addition to what he had submitted during the course of investigation. The DGAP had not at any stage examined the eligibility of Service Tax credit of the Respondent

D. For the contention made by the Respondent that the report proceeded on the assumptions and presumptions, the DGAP submitted that the contention of the Respondent was not correct. ITC was available on the inputs (goods and services) purchased/used in the project, which was cost to the Respondent. Hence, when ITC was being considered in the investigation then it implied that the cost to the Respondent had been considered as far as ITC was concerned.

The main factor under consideration for the sake of profiteering was that there should not be any increase in the base price of sold-out flats to obviate passing of benefit of additional ITC. In other words, there should be commensurate reduction in prices of the sold-out flats. The capital expenditure cost incurred by the Respondent, substantial increase in cost of inputs due to increase in rate of tax on such

inputs etc. was not factored in while calculating profiteering in terms of Section 171 of the CGST Act, 2017.

E. For the contention raised by the Respondent that the DGAP's report was vague and cryptic, the DGAP has clarified that:-

i. The DGAP had investigated the matter of additional benefit of ITC in respect of project which was launched before implementation of GST (pre-GST era) and continued in GST regime. This was done because in the erstwhile tax regime (pre-GST), various taxes and cesses were being levied by the Central Government and the State Governments, which got subsumed in the GST. Out of these taxes, the ITC of some taxes was not allowed in the erstwhile tax regime. In case of Construction Service, while the ITC of Service Tax was available, the ITC of Central Excise Duty paid on inputs was not available to the service provider. Such input taxes, the credit of which was not allowed in the erstwhile tax regime, used to get embedded in the cost of the goods or services supplied, resulting in increased price. With the introduction of GST w.e.f 01.07.2017, all these taxes got subsumed in the GST and the ITC of GST was available in respect of all goods and services, unless specifically denied. Broadly, the additional benefit of ITC in the GST regime would be limited to those input taxes, the credit of which was not allowed in the pre-GST regime but was allowed in the GST regime. Therefore, in the cases where projects were launched in pre-GST regime,

the prices of the flats/units/homes were fixed in pre-GST regime considering the various factors affecting the cost keeping in mind the prevailing taxes, cost of the raw material and ITC available, however, in all such cases, there had been availability of additional benefit of ITC in GST regime. Therefore, the additional benefit of ITC in post-GST regime which was not available earlier was required to be passed on by the suppliers to all the recipients by way of commensurate reduction in prices, in terms of Section 171 of CGST Act, 2017.

ii. The DGAP and the Authority were statutorily required to complete their task within a given time frame of 6 months, the ITC availed and the consequential profiteering, if any, had to be determined at a given point of time and such determination could not be deferred till the completion of the project.

iii. The main factor under consideration for the sake of profiteering was that there should not be any increase in the base prices of sold-out flats to obviate passing of benefit of additional ITC. In other words, there should be commensurate reduction in prices of the sold-out flats. The capital expenditure cost incurred by the Respondent, substantial increase in cost of inputs due to increase in rate of taxes on such inputs etc. was not factored in while calculating profiteering in terms of Section 171 of the CGST Act, 2017.

F. For the contention raised by the Respondent that Section 171 of the Act may be invoked only for sale of residential units, the DGAP has clarified that as per the methodology and procedure, the investigation in real estate sector cases was done in respect of the whole project including residential and commercial units in pre and post GST period. The contention of the Respondent was wrong as the commercial units were sold out in post GST period.

G. For the contention made by the Respondent that the actual benefit, if any, could be determined only at the stage of the receipt of Completion Certificate, the DGAP has submitted that the contention of the Respondent made in this para was not acceptable as unutilised ITC had been correctly considered for the purpose of computing profiteering amount as the unutilized credit was subject to reversal under Rule 42 of the CGST Rules only on receipt of Completion Certificate which could be a long-drawn process and the flat buyers cannot wait so long to avail his due profit.

Further, the DGAP and the Authority were statutorily required to complete their task within a given time frame of 6 months, the ITC availed and the consequential profiteering, if any, had to be determined at a given point of time and such determination could not be deferred till the completion of the project.

H. The investigation had been done strictly on the basis of data/documents/returns furnished by the

Respondent. Investigation could not be based on presumptive assumptions.

I. As per the DGAP Report dated 23.09.2021, vide para 4, the Respondent was given an opportunity to inspect the non-confidential evidences/information submitted by the Applicant No. 1, during the period 14.07.2020 to 15.07.2020. However, the Respondent did not avail of the said opportunity so the contentions made by the Respondent were wrong.

5. Copy of the above clarifications dated 04.05.2022 under Rule 133(2A) of the CGST Rules, 2017 filed by the DGAP was supplied to the Respondent for filing his rejoinder/submissions. The Respondent had filed his rejoinders/submissions dated 24.05.2022 and 08.06.2022 vide which he had reiterated his earlier submissions dated 09.04.2022 and in addition submitted that there was apparent error committed in calculation by the DGAP, which would demonstrate that there was no profiteering. The error has been highlighted by the Respondent in table below:-

(Amount in Rs.)

Sr. No.	Particulars	Total (Pre-GST) 01.04.2016 to 30.06.2017	Total (Post GST) (01.07.2017 to 31.05.2020
1	CENVAT of Service Tax Paid on Input Services used for units (A)	1,24,61,086	0
2	Input Tax Credit of GST(B)	0	2,94,39,571
3	Total CENVAT/Input Tax Credit Available (C)= (A+B)	1,24,61,086	2,94,39,571
4	Turnover for Flats as per Home Buyers List (D)	45,83,18,520	27,37,47,404
5	Total Saleable Area (in SQF) (E)	95,452	95,452
6	Total Sold Area (in SQF) relevant to turnover (F)	53,971	12,516
7	Relevant ITC [(G)= (A or B)*(F)/(E)]	70,45,816	38,60,219
Ratio of ITC Post-GST [H=(G)/(D)*100]		**1.54%**	**1.4%**

Thus, as it could be seen from the table above, there was no profiteering and hence the report requiring the Respondent to pass

on the alleged benefit of ITC amounting to Rs. 1,82,42,527/- should be withdrawn.

6. The hearing in the matter was held on 09.06.2022 via video conferencing. The Same was attended by Sh. Satyavijay Gamaprasad Yadav for the Applicant No. 1, Sh. Bharat Raichandani, Advocate, Sh. Mitesh Rajgor, Chartered Accountant and Sh. Deepak Patel, Partner for the Respondent. The Respondent and the Applicant No. 1 were heard. The Respondent has re-iterated his written submissions dated 09.04.2022, 24.05.2022 and 08.06.2022. Further, the Respondent and the Applicant No. 1 were directed to file their consolidated written submissions by 13.06.2022.

7. The Applicant No. 1, vide her submissions dated 12.06.2022 *inter alia* stated that:-

   (i) The Applicant No. 1 booked Flat No. 701 and 702 for total agreements value of Rs. 1,37,72,500/- (Rs. 68,86,250/- Agreement value of each flat).

   (ii) Two Agreements entered/registered vide dated 29/6/2017.

   (iii) Expected date of Completion of the project as per Agreements was 31/12/2017.

   (iv) As per the clauses of Agreements, amount to be paid after 15 days of demand.

   (v) As on date of Registration i.e. dated 29/6/2017, 21st Slab was over and hence amount due as per agreements was Rs. 1,30,83,875/- (Rs. 65.41,937/- for each flat) which was 95% of total agreements value. The Respondent /Developer has raised Demand Letters dated 06/07/2017 for 95 % Due amounts.

(vi) Payments made by the Applicant No. 1 to the Respondent/Developer were as per the below Schedule:-

Date	Amount	Particulars
22.06.2017	5,00,000/-	Agreement Value
19.07.2017	11,34,775/-	Agreement Value
26.07.2017	90,00,000/-	Agreement Value
25.09.2017	24,49,100/-	Agreement Value
Total	**1,30,83,875/-**	

Date	Amount	Particulars
27.06.2017	1,37,724/-	VAT
27.06.2017	6,19,764/-	Service Tax
23.06.2017	7,48,700/-	Stamp Duty
Total	**15,06,188/-**	

(vii) Thus, on 27.06.2017 buyer paid Rs. 7,57,488/- towards VAT & Service Tax on entire agreement value which was 1% & 4.5% respectively. Obviously, it would be as demanded from the Respondent/developer as Buyer would not know which tax was payable. The Respondent/Developer has issued receipt and acknowledged the collection of VAT & Service Tax on the entire agreement value.

(viii) Once VAT & Service Tax on entire value was recovered, then the Respondent/Developer couldn't demand GST on the entire agreement value. The Respondent/Developer claimed that GST Authority would demand GST from him and he took support from one GST circular also. However, GST circular and provision clearly stated that any invoice issued after July would attract GST.

(ix) The Respondent/Developer issued one letter dated 18.07.2018 for GST dues in which he was demanding GST@12% on '10 % agreement amount' and he was demanding Service Tax @4.5 % and VAT @ 1% on the '90 % agreement amount'.

(x) In present case, other than Demand Letter dated 18.07.2018 pre GST, the Respondent/Developer had not issued any invoice of GST as required under GST law and further he had already shown his intention to recover VAT & Service Tax and acknowledged also. Now developer could not change his mind and recover GST on the entire agreement value.

(xi) The Respondent/Developer was demanding entire 12% GST without giving any credit available to her for using material and services in Pre-GST era which he bound to transfer to buyer. The Respondent/Developer claimed that he had not availed any GST credit on completed WIP to avoid anti-profiteering provision under GST during transition phase from VAT to GST. If the Respondent/Developer had not claimed any credit for his convenience, he couldn't claim entire 12% GST without allowing any GST credit.

(xii) W.e.f. April 2019 GST Department had announced composition scheme of GST for the Respondent/ Developer, where applicable GST rate was 5%.

(xiii) So, for any reason if the Respondent/Developer was not availing GST credit which was available to him or not opting reduced Composition rate of 5% then the Respondent/Developer should compensate buyer by allowing reasonable GST credit to the buyer.

8. The Respondent vide his email dated 13.06.2022 has made his additional written submissions wherein he has *inter alia* submitted that:-

a. The DGAP misunderstood the statement made by the Respondent. The Respondent submitted that there was alleged short payment of Rs. 63,39,788/- on services provided to the government against SRA Constructions by Service Tax Audit department. Hence, the Respondent was asked to reverse the credit to the extent of such short payment. Thereafter, Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 was introduced. The Respondent opted for said scheme against the aforesaid allegation of short payment. The application was allowed under the scheme and accordingly, the payment in terms of the scheme was made through bank.

b. Thus, from above it could be seen that dispute in relation to Rs. 63,39,788/- has no relation to credit availed by the Respondent in pre-GST era.

c. There was no estoppel in law. Even if assumed that the Respondent has asked the DGAP to deduct Rs. 63,39,788/- from total credit availed in pre-GST era, the DGAP ought to have considered the Cenvat credit claimed by the Respondent in his Returns. The Respondent submitted that the total Cenvat credit availed by him including cess, during 01.04.2016 to 30.06.2017, amounted to Rs. 18,805,773/-. No show cause Notice had been issued denying the aforesaid credit. Hence, the same must be considered for the calculation of alleged anti profiteering. The error has been highlighted in table below:-

Scenario 1

Table- 'A' (Amount in Rs.)

Sr. No.	Particulars	Total (Pre-GST) 01.04.2016 to 30.06.2017	Total (Post GST) (01.07.2017 to 31.05.2020
1	CENVAT of Service Tax Paid on Input Services used for units (A)	1,88,05,773/-	0
2	ITC of GST(B)	0	2,94,39,571
3	Total CENVAT/ITC Available (C)= (A+B)	1,88,05,773/-	2,94,39,571
4	Turnover for Flats as per Home Buyers List (D)	45,83,18,520	27,37,47,404
5	Total Saleable Area (in SQF) (E)	95,452	95,452
6	Total Sold Area (in SQF) relevant to turnover (F)	53,971	66,487
7	Relevant ITC [(G)= (A or B)*(F)/(E)]	1,06,33,265	2,05,06,105
Ratio of Input Tax Credit Post-GST [H=(G)/(D)*100]		**2.32%**	**7.49%**

Thus, from above it could be seen that once the Cenvat credit of Rs. 63,39,788/- forms part of the calculation, the ratio of Cenvat credit in pre-GST jumped to more than 2.32%. Hence, the calculation made under aforesaid report, to the above extent, must be revised.

d. In addition to above credit, the report does not consider the credit claimed prior to 31.03.2016. Prior to 31.03.2016, the Respondent had claimed and availed credit of Rs. 52,42,335/-. Hence, the same must be considered for the calculation of alleged anti profiteering. The error is highlighted in table below:-

Scenario 2

Table- 'A' (Amount in Rs.)

Sr. No.	Particulars	Total (Pre-GST)	Total (Post GST) (01.07.2017 to 31.05.2020
1	CENVAT of Service Tax Paid on Input Services used for units (A)	2, 40,48,108/-	0
2	ITC of GST(B)	0	2,94,39,571
3	Total CENVAT/ITC Available (C)= (A+B)	2, 40,48,108/-	2,94,39,571
4	Turnover for Flats as per Home Buyers List (D)	45,83,18,520	27,37,47,404

5	Total Saleable Area (in SQF) (E)	95,452	95,452
6	Total Sold Area (in SQF) relevant to turnover (F)	53,971	66,487
7	Relevant ITC [(G)= (A or B)*(F)/(E)]	1,35,97,415	2,05,06,105
Ratio of ITC Post-GST [H=(G)/(D)*100]		**2.97%**	**7.49%**

Thus, from above it could be seen that once the Cenvat credit of Rs. 1,15,82,123/- (Rs. 63,39,788/- + Rs. 52,42,335/-) forms part of the calculation, the ratio of Cenvat credit in pre-GST jumps to more than 2.32%. Hence, the calculation made under aforesaid report, to the above extent, must be revised.

e. During the course of the hearing, the Respondent highlighted that the total sold area (post GST) included area sold in pre-GST era (in column 6 of Table 'A'). Hence, the calculation was incorrect. Admittedly, the total saleable Area was 95,452 sq. ft. (Column 5 of the table). However, in terms of the DGAP's report, total sold area in Pre-GST was 53,971 sq. ft. and in post GST era was 66, 487 sq. ft. Thus, the above was an evident error. It was impossible that the total area sold was more than total saleable area. The error has been highlighted in table below:-

Scenario 3 **Table- 'A'** (Amount in Rs.)

Sr. No.	Particulars	Total (Pre-GST) 01.04.2016 to 30.06.2017	Total (Post GST) (01.07.2017 to 31.05.2020
1	CENVAT of Service Tax Paid on Input Services used for units (A)	1,24,61,086	0
2	ITC of GST(B)	0	2,94,39,571
3	Total CENVAT/ITC Available (C)= (A+B)	1,24,61,086	2,94,39,571
4	Turnover for Flats as per Home Buyers List (D)	45,83,18,520	27,37,47,404
5	Total Saleable Area (in SQF) (E)	95,452	95,452
6	Total Sold Area (in SQF) relevant to turnover (F)	53,971	12,516
7	Relevant ITC [(G)= (A or B)*(F)/(E)]	70,45,816	38,60,219
Ratio of Input Tax Credit Post-GST [H=(G)/(D)*100]		**1.54%**	**1.4%**

Thus, from above it could be seen that once the actual sold area (post-GST) was considered, the ratio of ITC in post-GST fell to 1.4%. Therefore, it could be seen that there was no profiteering.

f. To the above submission, the Authority pointed out that the turnover of the Respondent post GST era included part payment of flats sold in pre-GST era. Hence, the total area sold post GST was inclusive of area sold in Pre-GST regime. To this, the Respondent submitted that the turnover of flat sold post GST era was Rs. 19,94,78,774/-. Accordingly, the re-calculation has been tabulated below:-

Scenario 4

Table- 'A' (Amount in Rs.)

Sr. No.	Particulars	Total (Pre-GST) 01.04.2016 to 30.06.2017	Total (Post GST) (01.07.2017 to 31.05.2020
1	CENVAT of Service Tax Paid on Input Services used for units (A)	1,24,61,086	0
2	ITC of GST(B)	0	2,94,39,571
3	Total CENVAT/ITC Available (C)= (A+B)	1,24,61,086	2,94,39,571
4	Turnover for Flats as per Home Buyers List (D)	45,83,18,520	19,94,78,774/-
5	Total Saleable Area (in SQF) (E)	95,452	95,452
6	Total Sold Area (in SQF) relevant to turnover (F)	53,971	12,516
7	Relevant ITC [(G)= (A or B)*(F)/(E)]	70,45,816	38,60,219
Ratio of ITC Post-GST [H=(G)/(D)*100]		**1.54%**	**1.94%**

Thus, even if he considered the suggested calculation, it could be seen that the ratio of ITC in post-GST fell to 1.94%. Hence, the calculation made under aforesaid report, to the above extent, must be revised.

g. Further, the total turnover sold before pre-GST period was incorrect. The department has not considered the sale of Flat

No. 302, 303 and Flat No. 906. He submitted that 100% payment was received before 30.06.2017. However, the same has been missed for calculating the total area sold pre GST era. The total area of aforesaid units was 1490.48 sq. ft. Accordingly, the re-calculation is tabulated below:-

Scenario 5 **Table- 'A'** (Amount in Rs.)

Sr. No.	Particulars	Total (Pre-GST) 01.04.2016 to 30.06.2017	Total (Post GST) (01.07.2017 to 31.05.2020
1	CENVAT of Service Tax Paid on Input Services used for units (A)	1,24,61,086	0
2	Input Tax Credit of GST(B)	0	2,94,39,571
3	Total CENVAT/Input Tax Credit Available (C)= (A+B)	1,24,61,086	2,94,39,571
4	Turnover for Flats as per Home Buyers List (D)	45,83,18,520	27,37,47,404
5	Total Saleable Area (in SQF) (E)	95,452	95,452
6	Total Sold Area (in SQF) relevant to turnover (F)	55,461	66,487
7	Relevant ITC [(G)= (A or B)*(F)/(E)]	72,40,333	2,05,06,105
Ratio of Input Tax Credit Post-GST [H=(G)/(D)*100]		**1.58%**	**7.49%**

Thus, if sale of Flat No. 302, 303 and Flat No. 906 was considered for calculation of total sold area (Pre-GST era), it could be seen that the ratio of ITC in pre-GST jumps to 1.58%. Hence, the calculation made under aforesaid report, to the above extent, must be revised.

h. Considering that if all the above submission of the Respondent were accepted, the re-calculation has been tabulated below:-

Scenario 6

Table- 'A' (Amount in Rs.)

Sr. No.	Particulars	Total (Pre-GST) 01.04.2016 to 30.06.2017	Total (Post GST) (01.07.2017 to 31.05.2020
1	CENVAT of Service Tax Paid on Input Services used for units (A)	2, 40,48,108/-	0
2	ITC of GST(B)	0	2,94,39,571
3	Total CENVAT/ITC Available (C)= (A+B)	2, 40,48,108/-	2,94,39,571

4	Turnover for Flats as per Home Buyers List (D)	45,83,18,520	19,94,78,774/-
5	Total Saleable Area (in SQF) (E)	95,452	95,452
6	Total Sold Area (in SQF) relevant to turnover (F)	55,461	11,026
7	Relevant ITC [(G)= (A or B)*(F)/(E)]	1,39,72,804	34,00,670
Ratio of ITC Post-GST [H=(G)/(D)*100]		**3.05%**	**1.7%**

Thus, from above it could be seen that there was no profiteering. In all above scenarios it could be seen that the DGAP had erred in calculating the ratio of ITC Pre/Post-GST.

i. The Respondent was dealing in residential and commercial units. However, the calculation made under Table 'A' was general for all units. The Respondent submitted that there was no sale of commercial units pre-GST. Once, this was the case, invocation of section 171 for sale of commercial units could not be made. Hence, amount pertaining to same should be excluded for calculation of ratio of input tax. Calculation for residential units as per format adopted by the DGAP has been tabulated below:-

Scenario 6 (for residential unit only)

Table- 'A' (Amount in Rs.)

Sr. No.	Particulars	Total (Pre-GST) 01.04.2016 to 30.06.2017	Total (Post GST) (01.07.2017 to 31.05.2020
1	CENVAT of Service Tax Paid on Input Services used for units (A)	1,36,34,543	0
2	ITC of GST(B)	0	36,70,816
3	Total CENVAT/ITC Available (C)= (A+B)	1,36,34,543	36,70,816
4	Turnover for Flats as per Home Buyers List (D)	45,83,18,520	25,99,47,403
5	Total Saleable Area (in SQF) (E)	69,430	69,430
6	Total Sold Area (in SQF) relevant to turnover (F)	53971	65,638
7	Relevant ITC [(G)= (A or B)*(F)/(E)]	1,05,98,674	34,70,330
Ratio of ITC Post-GST [H=(G)/(D)*100]		**2.31%**	**1.34%**

Thus, from it could be seen that there was no profiteering. Hence, the Respondent submitted that the report requiring him

to pass on the alleged benefit of input tax credit amounting to Rs. 1,82,42,527/- should be withdrawn.

9. The Authority has carefully considered the Reports filed by the DGAP, all the submissions and the documents placed on record, and the contentions raised by the Respondent vide his written submissions.

10. On examining the various submissions, the Authority finds and directs as follows:

(i) The Respondent has submitted as recorded at paragraph 3 (c) (i) to (iv) and paragraph 8 (a) to (c) above they were eligible to CENVAT credit of Rs. 1,88,00,874/- from 1.04.2016 to 30.06.2017. However, they had wrongly and inadvertently informed the DGAP that they were ineligible for Rs. 63,39,788/- of such credit. However, on reconsideration, according to them, they were never denied such CENVAT credit of Rs. 63,39,788/- and that they were eligible for the same. It is their contention that, there can be no estoppel against law and that the DGAP should give them the benefit of entire amount CENVAT credit of Rs. 1,88,00,874/- in the calculations made by it while calculating the percentage of ITC to turnover available to them in the pre GST period from 1.04.2016 to 30.06.2017.

(ii) The Respondent has contended as recorded at para 8(g) above that, the DGAP has not included the area of three Units Nos. 302, 303 and 906, totalling 1490.48 sq. ft. for which 100% payment was received before 30.06.2017 in the Total Sold Area relevant to Turnover for Pre GST period, at Sr. no. 6, Item (F) of Table (A) of its Report while calculating the percentage of ITC to Turnover.

(iii) The Authority directs that, the DGAP shall verify the actual amount of CENVAT credit available to the Respondent, for the Project "Shiv Bliss", from 1.04.2016 to 30.06.2017 as per their CENVAT Registers/records and Service Tax Returns and shall take into consideration such actual amount of credit which has been availed by the Respondent and allowed to be so availed by the relevant statutory authorities, as verified by the DGAP from the said records. Consequently, the DGAP shall recalculate the percentage of ITC to Turnover in the relevant Tables for the purpose of working out the profiteered amount, if any.

(iv) The DGAP shall verify from the records as to whether the area of three Units no.s 302, 303 and 906, totalling 1490.48 sq. ft. for which 100% payment is said to have been received before 30.06.2017 is included in the Total Sold Area relevant to Turnover for Pre GST period, at Sr. no. 6, Item (F) of Table (A) of its Report. The DGAP shall include any such area which has not been included/missed out while calculating the percentage of ITC to Turnover and consequently, the DGAP shall recalculate the percentage of ITC to Turnover in the relevant Tables for the purpose of working out the profiteered amount, if any.

11. Therefore, without going into the merits and the other submissions made by the Respondent and the Applicants at this stage, this Authority finds this case must be reinvestigated by the DGAP based on the above directions of this Authority. Thus, we direct the DGAP to reinvestigate the matter as per the provisions of Rule 133(4) of the CGST Rules, 2017 and submit his report before this Authority.

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 sent the Applicants and the Respondent free of cost for necessary action. File be consigned after completion.

S/d
(Amand Shah)
Technical Member &
Chairman

S/d
(Pramod Kumar Singh)
Technical Member

S/d
(Hitesh Shah)
Technical Member

30.9.22
(Rajarshi Kumar)
NAA, Secretary

File No. 22011/NAA/Rushi Builder/60/2021 Date:-30.06.2022

Copy To:-

1. M/s Rushi Builder & Developers, B-15 Society No.30, Amita co-operative, Society Ltd. SYP Nagar, MHADA, Andheri West, Mumbai- 400053.
2. Smt. Rekha Gamaprasad Yadav, A-702, Shivbliss CHS, L.B.S Marg, Opp to Dream Mall, Bhandup West, Mumbai-400078.
3. Directorate General of Anti-Profiteering, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, New Delhi-110001.
4. Guard File.