

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

Case No. 68/2022  
Date of Institution 05.11.2020  
Date of Order 02.09.2022

**In the matter of:**

1. Sh. Dhiraj Shetty- dynamicdhiraj@gmail.com
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 Bhagwati Infra, 1306, Real Tech Park, Plot No. 39/2, Sector- 30A, opp. Vashi Railway Station, Vashi, Navi Mumbai- 400 705.

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. Dhiraj Shetty for the Applicant No. 1 in person.
2. Sh. Bharat Raichandani, Sh. Rishab Jain Deepak Khokhar, Annweshaa Laskar, Advocates, on behalf of the Respondent.
3. Sh. Lal Bahadur, Assistant Commissioner for DGAP.

## ORDER

The instant Report dated 04.11.2020, has been furnished by the Applicant No. 2 i.e. Director General of Anti-Profiteering (DGAP) under Rule 129(6) of the Central Goods and Services Tax Rules, 2017. The brief facts of the present case, are that a reference was received by the DGAP from the Standing Committee on Anti-profiteering on 09.10.2019 to conduct a detailed investigation in respect of an application filed under Rule 128 of the Central Goods and Services Tax Rules, 2017 alleging profiteering by the Respondent in respect of purchase of a flat in the Respondent's project "Bhagwati Eminence", situated at Plot 7/7A, Sector-13, Nerul, Navi Mumbai. The Applicant No. 1 alleged that the Respondent had not passed on the commensurate benefit of input tax credit (ITC) to him by way of commensurate reduction in price against payments due to him. The Applicant No. 1 also stated that on raising concern to the Respondent, he was informed that already a discount of 3% had been given to him on the 12% GST and remaining 4% of the ITC will be used by the promoters without passing it on to the customers on the reasoning that GST ITC refunds process was unclear, complex and uncertain. Further, on being asked about who keeps the remaining part of ITC after the 3% discount given to the customer from the 12% GST, the Applicant No. 1 received the following reply vide email dated 06.07.2019 which reads as "*Before 31/03/2019 builder has already paid 12% on the due amount so obviously the amount goes to the government tax.*" The Applicant No. 1 submitted the following documents along with his application:



- (a) E-mails of correspondence with Respondent requesting to pass on the benefit of input tax credit.
- (b) Copy of Demand Letters and receipts.

2. On receipt of the aforesaid reference from the Standing Committee on Anti-profiteering on 09.10.2019, a Notice under Rule 129 of the CGST Rules

2017, was issued on 15.10.2019 by the DGAP, calling upon the Respondent to reply as to whether he admitted that the benefit of input tax credit had not been passed on to the recipients 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 to furnish all documents in support of his reply.

3. The Respondent as well as the Applicant No. 1 were afforded an opportunity by the DGAP to inspect the non-confidential evidences/information during the period 24.10.2019 to 25.10.2019 and on 07.10.2020 to 12.10.2020 respectively however, neither Respondent nor Applicant No. 1 had availed of the said opportunity.


4. The Applicant No. 1 vide e-mail dated 28.09.2020 had requested to send the non-confidential documents by e-mail therefore, the DGAP vide e-mails dated 20.10.2020 and 22.10.2020 had provided the non-confidential documents/reply furnished by the Respondent which the Applicant No. 1 vide e-mails dated 21.10.2020 & 22.10.2020 acknowledged to have received and submitted that :-

(a). The Respondent has collected 9% GST on the agreement value, even though the prevailing GST rate was 12% before April 2019.

(b). For flats booked from Jan 2019 to Aug 2019, it seems to be massive variation in the agreement value when the market rate was around 1.45 Cr for a 2BHK (47.01 sq meters) in the area. The potential reason might be the promoter incentivized under-reporting of the agreement value (through cash transactions i.e. no transaction traceability) to lower the GST, Stamp Duty and other Tax commitment which are directly linked to the agreement value leading to tremendous loss to the National Exchequer from a single project under the group.

5. The period covered by the current investigation is from 01.07.2017 to 30.09.2019.

6. The statutory time limit to complete the investigation was 08.04.2020 at the end of DGAP which was extended upto 30.11.2020 by virtue of Notification No. 35/2020-Central Tax dated 03.04.2020, Notification No. 55/2020-Central Tax dated 27.06.2020 and Notification No. 65/2020-Central Tax dated 01.09.2020 issued by Central Government under Section 168A of the Central Goods and Services Tax Act, 2017 wherein it was provided that *“any time limit for completion or compliance of any action, by any authority, has been specified in, or prescribed or notified under section 171 of the said Act, which falls during the period from the 20th day of March, 2020 to the 29th day of November, 2020, and where completion or compliance of such action has not been made within such time, then, the time-limit for completion or compliance of such action, shall be extended up to the 30th day of November, 2020.”*

7. The Respondent even after several reminders and summons had not furnished all the required documents/information to DGAP to investigate the matter. Therefore, the DGAP vide letters dated 06.07.2020, 03.09.2020 and 07.09.2020 had requested the Jurisdictional CGST authorities to deploy an officer to collect requisite documents from the Respondent and forward the same to him to investigate the matter under section 171 of the CGST Act 2017. Accordingly, the aforesaid authorities had collected the documents as sought by DGAP, from the Respondent by visiting his premises and forwarded to the DGAP for necessary action. 

8. The aforesaid documents of the Respondent has been summed up by the DGAP as under:-

(a) He is a partnership firm consisting of 06 partners and registered under Indian Partnership Act, 1932.

(b) Plot No. 7A, situated at Sector-13, Nerul, Navi Mumbai from City and Industrial Development Corporation of Maharashtra Ltd., (CIDCO), was allotted to the Respondent through auction by CIDCO, a governmental authority, mentioning the amount of Service Tax of Rs. 3,58,20,322/- in its allotment letter. Copy of said allotment letter along with copies of receipts no. 1400010306/2016 dated 17.10.2016 for Rs. 1,86,23,725/- & receipt no. 1400011617/2016 dated 16.11.2016 for Rs. 1,71,96,596/- issued by CIDCO for payment made by him towards Service Tax on the said plot, were furnished by the Respondent to the DGAP.

(c) The impugned project "Bhagwati Eminence" having Maharashtra RERA Regn. No. P51700008436, consists of 76 residential flats and 19 commercial shops, out of which 65 flats and 6 shops were sold as on 30.09.2019. The Occupancy Certificate has not been received till date.

(d) He had opted for 12% (GST @18% along with 1/3<sup>rd</sup> abatement for land value) with ITC in accordance with Notification No: 03/2019-Central Tax (Rate) dated 29th March 2019.

9. The Respondent submitted the following documents/information:

- (a) Copies of GSTR-1 for the period July, 2017 to Sept., 2019.
- (b) Copies of GSTR-3B for the period July, 2017 to Sept., 2019.
- (c) Copies of ST-3 returns for the period April, 2016 to June, 2017.
- (d) Screenshot of Tran-1 along with copy of letter dated 06.08.2019 filed by the Respondent before the office of Assistant Commissioner (GST & Excise), Division-III, CGST Belapur Commissionerate regarding verification of transitional credit claimed in form TRAN-1.
- (e) Tax rates - pre-GST and post-GST.
- (f) Copy of audited Balance sheet for FY 2016-17, 2017-18 & 2018-19.
- (g) Sample copy of sale agreement/contract issued to one Customer in the project "Bhagwati Eminence".

- (h) Copy of Electronic Credit Ledger for the period July, 2017 to Sept., 2019.
- (i) CENVAT/ITC register for the period April, 2016 to Sept., 2019.
- (j) Copy of allotment letter dated 25.08.2016 issued by City and Industrial Development Corporation of Maharashtra Ltd., (CIDCO) along with receipts of payments of Service Tax.
- (k) Copy of project report submitted to RERA.
- (l) Details of Service Tax and GST turnover, output tax liability payable and input tax credit availed for the project "Bhagwati Eminence".
- (m) List of home buyers in the project "Bhagwati Eminence" reconciling with ST-3/GSTR-3B returns.,

and no information/documents was classified by the Respondent as confidential in terms of Rule 130 of the Rules 2017.

10. The DGAP had scrutinized the submissions/replies of the Respondent, Applicant No. 1 and the documents/evidences on record and submitted his Investigation Report dated 04.11.2020 to this Authority, wherein the DGAP has inter alia stated that:-

(i). The main issues for determination were:-

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

(ii). The Respondent had claimed CENVAT Credit of Rs. 3,58,20,322/- towards amount paid for one time lease premium for plot allotted to him through auction by CIDCO. In this regard, as per Rule 2 (l) of the CENVAT Credit Rules, 2004, 'input service' is any service 'used by a

provider of taxable service for providing an output service'. In the instant case, Service Tax has been paid on lease premium for procurement of land, which, being an immovable property, cannot be treated as an output service, as Section 66D(d)(iv) of the Finance Act, 1994 covers 'renting or leasing of agro machinery or vacant land with or without a structure incidental to its use' under the Negative list of services. Since leasing of vacant land was covered in the Negative list at the relevant time, it implies that no Service Tax was leviable on the impugned service and whatever amount has been paid towards lease premium cannot be statutorily held payment of Service Tax. Resultantly, no CENVAT credit of any 'amount' paid towards lease premium can be allowed under the rule position described above.

The above premise has been clearly enshrined under Section 17(5)(d) of the Central Goods and Services Tax Act, 2017 according to which input tax credit shall not be available in respect of goods or services or both received by a taxable person for construction of an immovable property on his own account including when such goods or services or both are used in the course of furtherance of business. That was also upheld by the Telangana State Authority for Advance Ruling in TSAAR Order No. 05/2020 dated 24.06.2020 passed in the matter of *M/s Daicel Chiral Technologies (India) Private Limited*.

In view of the above, Service Tax of Rs. 3,58,20,322/- stated to be paid by the Respondent could not be held an eligible input service credit and had not been considered while computing profiteering.

**(iii).** As per para 5 of Schedule-III of the Central Goods and Services Tax Act, 2017 (Activities or Transactions which shall be treated neither as a supply of goods nor a supply of services) which reads as "*Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building*". Further, clause (b) of Paragraph 5 of Schedule II of the Central Goods and Services Tax 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 has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier". Thus, the input tax credit pertaining to the residential units and commercial shops which are under construction but not sold is provisional input tax credit which may be required to be reversed by the Respondent, if such units remain unsold at the time of issue of the completion certificate, in terms of Section 17(2) & Section 17(3) of the Central Goods and Services Tax Act, 2017, which read as under:-*

*Section 17 (2) "Where the goods or services or both are 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 exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies".*

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

Therefore, the input tax credit pertaining to the unsold units may not fall within the ambit of this investigation and the Respondent is required to recalibrate the selling price of such units to be sold to the prospective buyers by considering the net benefit of additional input tax credit available to them post-GST.

(iv). The Applicant No. 1 had contended that the Respondent collected 9% GST for the agreement value from him. The reason for 9% was unclear when the prevailing GST rate was 12% before April 2019. In



this regard, the DGAP has observed that Central Government, on the recommendation of the GST Council, had reduced the GST rate on the Construction service from 18% to 12% (Effective GST from 12% to 8% along with 1/3<sup>rd</sup> 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, in Ministry of Finance, Department of Economic Affairs vide F. No. 13/6/2009-INF, dated the 30th March, 2017.

The aforesaid notification dated 30.03.2017 defines “**Affordable Housing**” as *a housing project using at least 50% of the Floor Area Ratio (FAR)/Floor Space Index (FSI) for dwelling units with carpet area of not more than 60 square meters.*

In the impugned project, the Respondent has 38 Units of 47.01 sq. mtr. each and 38 Units of 67.33 sq. mtr. each. Further as per the project details available on the Maharashtra State RERA’s website, the total FSI in the impugned project is 5018.84 sq. mtr., whereas the total carpet area of 38 units having 47.01 sq. mtr. is 1786.38 sq. mtr. which comes to 35.59% of total FSI. Therefore, the impugned project does not appear to be Affordable Housing project and the incentive of reduced rate of GST does not appear to be available to the Respondent.

(v). The Respondent had discharged 12% effective GST on the units having area 67.33 sq. mtr. and 8% effective GST on the units having carpet area of 47.01 sq. mtr. (including Applicant No. 1’s unit). As mentioned above, the impugned project did not appear to be Affordable Housing Project and the Respondent was not eligible for lower rate of GST. Further, vide e-mail dated 06.07.2019 sent to the Applicant No. 1 whereby, Mr. Rocky Vora, Authorised Signatory & Partner of “Bhagwati Infra” informed that “*Before 31/3/19 builder has already paid 12% on the due amount so obviously the amount goes to govt.*”

tax.” However, as mentioned, the Respondent has discharged his output liability @ 8% GST (along with 1/3<sup>rd</sup> abatement for land value), resulting into the short payment of tax.

(vi). As per the demand letters & payment receipts submitted by the Applicant No. 1, the Respondent had collected 9% net GST (after giving 3% GST discount from 12%) from him and discharged the output effective GST @ 8% on the Applicant No. 1's unit. Therefore, the Respondent appeared to have contravened the provisions of Section 76 of the Central Goods and Services Tax Act, 2017 *Tax collected but not paid to Government* which reads as “(1) Notwithstanding anything to the contrary contained in any order or direction of any Appellate Authority or Appellate Tribunal or court or in any other provisions of this Act or the rules made thereunder or any other law for the time being in force, every person who has collected from any other person any amount as representing the tax under this Act, and has not paid the said amount to the Government, shall forthwith pay the said amount to the Government, irrespective of whether the supplies in respect of which such amount was collected are taxable or not.”

(vii). On the Applicant No. 1's allegation of *under-reporting of agreement value (through cash transactions i.e. no transaction traceability) to lower the GST, Stamp Duty and other Tax commitment which are directly linked to the agreement value leading to tremendous loss to the National Exchequer from a single project under the group* is outside the scope of provisions of Section 171 of the Central Goods and Services Tax Act, 2017 & the Rules made thereunder. DGAP has further stated that the grievances of the Applicant cannot be redressed through anti-profiteering provisions however this issue of under-reporting of turnover can be examined by the jurisdictional GST authorities.

(viii). On the allegation of profiteering, prior to GST was introduced, the Respondent was eligible to avail CENVAT credit of Service Tax

paid on Services but no credit was available in respect of Central Excise Duty and VAT paid on the inputs. However, post-GST, he could avail input tax credit of GST paid on all the inputs and the input services including the sub-contracts. From the information submitted by him for the period April, 2016 to September, 2019, the details of the input tax credits availed by him, his turnover from the impugned project “Bhagwati Eminence”, the ratios of input tax credits to turnovers, during the pre-GST (April, 2016 to June, 2017) and post-GST (July, 2017 to September, 2019) periods, are tabulated below:

**Table-‘A’**

(Amount in Rs.)

S. No.	Particulars	April, 2016 to March, 2017	April, 2017 to June, 2017	Total (Pre-GST)	July, 2017 to Sept., 2019 (Post-GST)
1	CENVAT of Service Tax Paid on Input Services as per ST-3 (A)	1,67,625*	28,851	1,96,476	-
2	Input Tax Credit of VAT Paid on Purchase of Inputs (B)	-	-	-	-
3	Input Tax Credit of GST Availed as per GSTR-3B (C)	-	-	-	1,80,61,618
4	Total CENVAT/Input Tax Credit Available (D)= (A+B) or (C)	1,67,625	28,851	1,96,476	1,80,61,618
5	Total Turnover as per list of Home Buyers (Net of Cancellation) (E)	4,00,65,553	68,40,053	4,69,05,606	57,36,66,160
6	Total Saleable Area (in Sq. mtr.) (F)			4,812	4,812
7	Total Sold Area (in Sq. mtr.) relevant to turnover (G)			747	3,842
8	Relevant ITC [(H)= (D)*(G)/(F)]			30,503	1,44,20,660
9	Ratio of CENVAT/ Input Tax Credit [(I) = (H)/(E)]			0.07%	2.51%

\*Note: Excluding CENVAT Credit of Rs. 3,58,20,322/- towards Service tax paid to CIDCO as discussed in para 10 (ii) supra.

(ix). In view of the above Table-‘A’, it is clear that the input tax credit as a percentage of the turnover during the pre- GST period (April, 2016 to June, 2017) and the post- GST period (July, 2017 to September, 2019), were 0.07% and 2.51% respectively were available to the Respondent which confirms that the Respondent had benefited from additional input tax credit to the tune of 2.44% (2.51% - 0.07%) of the turnover. Accordingly, the profiteering was examined by comparing the applicable tax rate and input tax credit 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 September, 2019) when the effective GST rate was 12% (GST @18% along with 1/3<sup>rd</sup> abatement for land value) on construction service, vide Notification No.11/2017-Central Tax (Rate), dated

28.06.2017. Accordingly, on the basis of the figures contained in table- 'A' above, the comparative figures of the ratio of input tax credit 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, are tabulated below;

**Table-'B'**

(Amount in Rs.)


S. No.	Particulars		Post- GST
1	Period	A	After 01.07.2017
2	Output GST Rate (%)	B	12.00
3	Ratio of CENVAT credit/ Input Tax Credit to Total Turnover as per table - 'A' above (%)	C	2.51
4	Increase in input tax credit availed post-GST (%)	D= 2.51% less 0.07%	2.44%
5	<b>Analysis of Increase in input tax credit:</b>		
6	Base Price raised/collected during July, 2017 to Sept., 2019 (Rs.)	E	57,36,66,160
7	GST @ 12% over Base Price	F=E*12%	6,88,39,939
8	Total amount to be collected/raised	G=E+F	64,25,06,099
9	Recalibrated Base Price	H= (E)*(1-D) or 97.56% of(E)	55,96,68,705
10	GST @12%	I=H*12%	6,71,60,245
11	Commensurate demand price	J=H+I	62,68,28,950
12	Excess Collection of Demand or Profiteering Amount	K=G-J	<b>1,56,77,149</b>

(x). In view of the above Table-'B', it appears that the additional input tax credit of 2.44% of the turnover should have resulted in the commensurate reduction in the base price as well as cum-tax price which was required to be passed on by the Respondent to the respective recipients accordance with the provisions of Section 171 of the CGST Act, 2017. Accordingly, 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 Applicant No. 1 and other home buyers during the period 01.07.2017 to 30.09.2019, he had benefited by additional amount of input tax credit of Rs. 1,56,77,149/- including GST @12%. The buyers and unit no. wise break-up of the said amount were given in Annex-34 of the said Report.

This amount is inclusive of benefit of input tax credit required to be passed on to the Applicant No. 1.

(xi). The Respondent has supplied construction services in the State of Maharashtra only.

(xii). The above computation of profiteering is with respect to all 65 flats and 6 shops which were booked till 30.09.2019 by the Respondent. The Respondent had claimed to pass on an amount of Rs. 61,83,525/- to 21 home buyers but he failed to submit documentary evidence to substantiate the same.

(xiii). In conclusion, the benefit of additional input tax credit to the tune of 2.44% of the turnover, has accrued to the Respondent in post-GST and the same was required to be passed on by the him to the respective recipients. On this account, the Respondent is required to pass on the benefit of input tax credit amounting to Rs. 1,56,77,149/- to the Applicant No. 1 and 70 recipients other than Applicant No. 1 who are identifiable as per the documents provided by the Respondent. Therefore, this amount of Rs. 1,56,77,149/- is required to be returned to such recipients. 

(xiv). As the present investigation covers the period from 01.07.2017 to 30.09.2019 hence profiteering, if any, for the period post September, 2019, has not been examined as the exact quantum of input tax credit that will be available to the Respondent in future cannot be determined at this stage, when he is continuing in availing input tax credit in respect to the present project.

(xv). In view of the above findings, the Section 171(1) of the Central Goods and Services Tax Act, 2017, requiring that “any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices”, has been contravened by the Respondent, amounting to Rs. 1,56,77,149/-. The Respondent had contravened the

various provisions including Section 74 & 76 of the Central Goods & Services Tax Act, 2017 and the Rules made thereunder, the case has been referred to the Jurisdictional CGST Authority to take appropriate actions to safeguard the Revenue.

**11.** The above Report was carefully considered by this Authority and a Notice dated 17.11.2020 was issued to the Respondent to explain why the Report dated 04.11.2020 submitted by the DGAP should not be accepted and his liability for profiteering in violation of the provisions of Section 171 of the CGST Act 2017 should not be determined. The Respondent was directed to file his reply to the allegations levelled in the aforesaid DGAP's Report dated 04.11.2020. Accordingly the Respondent has filed his written submissions dated 10.02.2021 wherein the Respondent has *inter alia* stated that:-

(i) The present Report was on incorrect factual and legal basis, he denied every allegation made by the DGAP in subject Report.

(ii). The provisions enshrined under Section 171 of the CGST Act, 2017 were made for those cases where certain ITC was not available earlier and now became available under GST regime and for those exempted supplies which became taxable or where Tax rate was reduced by introduction of GST. The said provisions are transitional which provide the ITC occurred to the supplier due to introduction of GST that should be passed on by way of commensurate reduction in price to the customers. Section 171 will apply only in those cases which are governed by 01.07.2017 and not for all times to come therefore the entire proceeding is bad. Section 171 of the CGST Act, 2017 will not apply in the subject case as it requires the supplier to pass on the benefit when there is reduction in rates or benefit of ITC availed by him but in the instant case, there were no reduction in rates.


(iii). Entire investigation is without jurisdiction as the Anti-profiteering Authority is acting as proper officer/adjudicating Authority/Commissioner issuing Show Cause Notice. Allegations made under para 17 and 22 of the DGAP's Report, can be dealt under Section

73/74 of the CGST Act 2017 by the Proper officer only who is defined under Section 2 (91) and having powers to adjudicate the matter under Section 73/74 of the said Act.

(iv). The DGAP has neither made available to him the application filed by the Applicant No. 1 which could be a fake, motivated and malafide complaint, for verification nor examined the such applicant. Therefore entire proceeding is bad in law.

• **Denial of Cenvat Credit of Rs. 3,58,20,322/- towards service tax paid to CIDCO is incorrect and bad in law:-**

(a) The DGAP has excluded the Cenvat credit of Rs. 3,58,20,322/- while calculating the total credit availed by him (the Respondent) on the amount paid to CIDCO towards one lease premium on allotment of plot for the impugned project.


(b) The DGAP has held that Service tax paid on lease premium was for procurement of land which is an immovable property, could not be treated as output service and further as per Section 17 (5) of the CGST Act 2017, ITC could not be claimed in respect of goods and services or both used by a taxable person for construction of immovable property. Therefore Service tax of Rs. 3,58,30,322/- paid by him, had not been considered while computing profiteering. 

Whereas DGAP has no jurisdiction to decide the eligibility of credit claimed under Service Tax Law. The denial of credit of Service Tax on allegation of non-taxability is beyond the scope of provisions of Section 171 (1) of CGST Act 2017. The anti-profiteering provisions could not be extended to cover situations which were not expressly contemplated by the said provisions. Credit could not be denied at the receiver end having collected by the service provider in view of cases MDS Switchgear limited 2008 (229) ELT 485 (SC)(ii) Sarvesh Refractories Private Limited 2007 (218) ELT 488 (SC). It was assumed that he (the

Respondent) was not eligible for such credit even though no investigation, proceeding and Show Cause Notice have been issued against him towards denial of such credit.

If the Cenvat credit of Rs. 3,58,20,322/- formed part of the calculation, the ratio of credit would be more than 11.92% for pre-GST period.

**(v). Without prejudice, Respondent has passed on the benefit of 3% to the applicant.**

The DGAP vide his aforesaid Report, had alleged that the Respondent had availed additional input tax credit @ 2.44% which was required to pass on to the flat buyers. Whereas the DGAP has observed that the Respondent had collected 9% instead of 12% GST rate on construction services. Thus 3% benefit was passed on to the Applicant No. 1, is more than the alleged additional ITC benefit. Since the Respondent had passed on the additional benefit to the Applicant No. 1 eventhough no benefit was occurred with the Respondent. Therefore the present Report of DGAP is liable to be withdrawn. 

**(vi). The Report is vague and cryptic. Hence, the Report is liable to be dropped:-**

(a) The DGAP had not covered the entire tenure/period upto occupation/completion certificate of the project in his investigation while calculating alleged benefits.


(b) The benefit of the Tax credit, treated as profiteering, was broadly computed by applying the ratio of such differential credit to the post-GST turnover. That methodology, however, sought 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.

(c) The present Report of the DGAP had ignored the benefit of 3% on GST rate passed on to the Applicant No. 1. The period and rate of interest or provision was not specified on which basis interest was calculated.

(d) The present Report of the DGAP presumed that no change in cost and rate of tax on inputs has occurred. The present Report had not led in any evidence in support its allegations.

(vii). In terms of Section 17 (2) and 17 (3) of the CGST Act 2017, he was required to reverse the proportionate credit to the extent of flats sold after receipt of Completion Certificate and the same would be considered implication on the credit availed by him. Hence the actual benefit could be determined only at the stage of the receipt of Completion Certificate. 

(viii). The value of certain flats which were cancelled in post-GST, had been taken in turnover during calculation of benefit. The value of such flats sold in pre GST period, must be reduced from pre-GST turnover.

(ix). The ITC availed by him in the Form GSTR-3B should be considered while computing benefit.

(x). The availment of additional ITC did not conclude the accrual of additional benefit which depends upon various factors such as increase in cost or increase of rate of tax on inputs. Therefore, the computation of benefit derived on basis

of comparing the ratio of ITC/Cenvat credit availed in pre and post-GST was incorrect as 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

For reasons above, the report requiring him to pass on the alleged benefit of input tax credit amounting to Rs.1,56,77,149/- should be withdrawn.

12. The above said submissions dated 10.02.2021 of the Respondent were forwarded to the DGAP for clarification under Rule 133(2A) of the CGST Rules, 2017. The DGAP vide his letter dated 24.02.202, has furnished his clarifications on the contentions of the Respondent placed at para 11 supra, given as under:-

(i). Upon the contention mentioned at para 11 (i) supra:- The DGAP has carried out a thorough investigation in terms of Section 171 of CGST Act 2017, on the basis of the documents and information submitted by the Respondent.

(ii). Upon the contention mentioned at para 11 (ii) supra:- Section 171 of the CGST Act 2017 envisaged that any reduction in rate of Tax or the benefit of ITC has to be passed on to the recipient by way of commensurate reduction in price. The provisions made under the said Section, have to be interpreted as whole and cannot be interpreted by restricting it merely to reduction in rate of Tax. The benefit of ITC is an integral part of the Section 171 (1) of the CGST Act, 2017.

The Respondent has no extra liability on the account of increase in GST

rate as compare to pre-GST taxes as the supplier of services is now being enjoying the ITC on all the purchases made by him resulting in reduction in prices of the materials purchased by him which should be passed on to recipients.

In pre-GST regime, various taxes and cesses were being levied by the Central and State Governments where ITC was restricted upto some of the taxes. In the case of Construction Services, ITC was available only on service tax paid on input services. ITC on Central Excise Duty paid on inputs was not allowed. Such input taxes, the credit of which was not allowed in pre-GST regime, used to get embedded in the cost of goods/service supplied, resulting increase in price. Whereas in post GST, unless specifically denied, ITC is available on the GST paid on all inputs and input services. Therefore such additional benefit of ITC accrued to the supplier required to be passed on to the recipients by way of commensurate reduction in price in terms of Section 171 of CGST Act, 2017.

(iii). Upon the contention mentioned at para 11 (iii) supra:- The above said Report dated 04.11.2020 submitted by the DG, DGAP in terms of Rule 129 (6) of the CGST Rules 2017, who is the proper officer in terms of Section 2 (91) of the CGST Act 2017 read with Section 3 of the said Act which inter alia includes Director General of Central Tax under clause (b).

Further, the DGAP had submitted his finding/observations vide his aforesaid Report made during the investigation, he had not adjudicated the matter under section 73/74 of the CGST Act, 2017 as alleged by the Respondent.

(iv). Upon the contention mentioned at para 11 (iv) supra:- The Respondent was afforded an opportunity to inspect the non-confidential evidences/information during the period from 24.10.2022 to 25.10.2022 but he had not availed the said opportunity. The said fact is duly

mentioned at para 4 of above said DGAP's Report dated 04.11.2020.


Further, the denial of claim for Cenvat credit of Rs.3,58,20,322/- towards Service Tax paid to CIDCO by the Respondent, DGAP has already covered vide para 17 of its aforesaid Report dated 04.11.2020 which is placed at paragraph 10 (ii) supra wherein it is clarified that the Service Tax of Rs. 3,58,20,322/- paid by the Respondent to CIDCO, was not an eligible input service credit and hence had not been considered while computing profiteering.

(v). Upon the contention mentioned at para 11 (v) supra:- The contention of the Respondent had already been replied by the DGAP vide para 28 of its aforesaid Report dated 04.11.2020 which is placed at para 10 (xii) supra. Moreover, the Applicant No. 1 vide his email dated 20.02.2021 to DGAP, has denied to receive any benefit of ITC from the Respondent.

(vi). Upon the contention mentioned at para 11 (vi) supra:- Section 171 of the CGST Act 2017 mandates passing of additional ITC benefit which had accrued to the Respondent during construction of the project before issuance of occupancy certificate. Further, the Respondent had availed ITC every month by filing his GSTR-3B returns in spite consisting a long gestation period in a housing project. The Respondent could not enrich himself at the expense of the flat buyers by denying them the benefit of ITC till completion of the project while he used the same in his business for discharging his output tax liability every month. Therefore the Respondent has to make periodical assessment of the ITC benefit and pass it on to the eligible buyers on each and every demand raised by him. The Respondent could always make adjustment in case more or less benefit is passed on at the final computation of the Respondent cannot be accepted.

Further the contention raised by the Respondent w.r.t. the presumption of no change in cost is wrong and hence denied. In this regard, DGAP has submitted that the increase in the cost of inputs and input services

might be a factor for determination of price but that factor was independent of the output GST rate. As there was no cost escalation clause in the agreement entered by the Respondent with the home buyers, the increase in cost, if any is a kind of business risk which must have been factored in by the Respondent at the time of entering into agreement. The Respondent could not claim to set off such increase in his cost with the benefit of ITC which is the sacrifice of precious tax revenue made from the kitty of the Central and the state government and required to be passed on to the end consumers who bear the burden of tax.

**(vii).** Upon the contention mentioned at para 11 (vii) supra:-The ITC pertaining to the unsold units was outside the ambit of the investigation and the respondent is required to recalibrated the selling price of such units to be sold the prospective buyers by considering the net benefit of additional input tax credit available to him post GST as per CGST Act 2017 and Rules made thereunder. Therefore the proportionate credit of GST on expenses incurred attributable to such unsold units was outside the scope of investigation. the DGAP had computed the benefit of ITC on the area sold and turnover received on such area. DGAP had neither computed the benefit on the unsold area nor the Respondent was asked to pass on the benefit on the unsold area and hence the ITC relevant to such area would remain intact with the Respondent which he can reverse at the time of receipt of CC. Hence the above contention of the Respondent is incorrect. 

**(viii).** Upon the contention mentioned at para 11 (viii) supra:- The value of flats cancelled in pre GST regime had been factored while making the final calculation by DGAP as mentioned in Table -A at para 10 (viii) supra. Therefore, the contention raised by the Respondent is wrong and hence denied.

**(ix).** Upon the contention mentioned at para 11 (ix) supra:- The value of ITC was taken on the basis of GST availed by the Respondent in his

GSTR-3B, as mentioned in Table –A at para 10 (viii) supra. Further, as stated in para-8 of the said Report, the investigation covers the period from 01.07.2017 to 30.09.2019 and any transaction expected to occur post 30.09.2019 is outside the scope of present investigation.

(x). Upon the contention mentioned at para 11 (x) supra:- The increase in the cost of inputs and input services might be a factor for determination of price but it is independent of the output GST rate. As there is no cost escalation clause in the agreement entered by the Respondent with the home buyers, the increase in the cost, if any was a kind of business risk which must have been factored by the Respondent at the time of entering into agreement. The Respondent could not claim to set off such increase in his cost with the benefit of ITC which is the sacrifice of precious tax revenue made from the kitty of the Central and the state government and required to be passed on to the end consumers who bear the burden of tax .

Further, no extra liability on the Respondent on the account of increase in rate of GST as compared to the Service Tax rate. The supplier of input service were not eligible to ITC of VAT paid on purchases made by him in pre-GST regime, which is available to him in post GST regime resulting in reduction in price of the material purchased by him. The benefit of such reduction should have been passed on by the supplier to the Respondent.

In pre-GST regime, various taxes and cesses were being levied by the Central and State Governments where ITC was restricted upto some of the taxes. In the case of Construction Services, ITC was available only on service tax paid on input services. ITC on Central excise duty paid on inputs was not allowed. Such input taxes, the credit of which was not allowed in pre-GST regime, used to get embedded in the cost of goods/service supplied, resulting increase in price. Whereas in post GST, unless specifically denied, ITC is available on the GST paid on all inputs and input services. Therefore such additional benefit of ITC accrued to the supplier required to be passed on to the recipients by way

of commensurate reduction in price in terms of Section 171 of CGST Act, 2017.

13. The above said clarifications dated 24.02.2021 of the DGAP, have been supplied to the Respondent as well as the Applicant No. 1 for their consolidated submissions on it. Accordingly the Respondent vide letters dated 02.04.2021 and 09.04.2021 has submitted his replies on the above said clarifications of the DGAP wherein the Respondent reiterating his previous arguments made vide his letter dated 10.02.2021, has stated that he had paid the GST @12% to the Government for the entire project and it is immaterial whether he had charged @8%/9% or 12% from the flat buyers.

14. The above said replies of the Respondent, were forwarded to the DGAP for clarifications under Rule 133 (2A) of the CGST Rules 2017. The DGAP vide his letter dated 28.06.2021 has submitted his clarifications stating that the issue of collection of 9% GST from buyers and discharge of 8%/12% GST to the Governments by the Respondent has already been dealt vide paras 19 to 22 of Report dated 04.11.2020 by the DGAP. Furthermore, the Respondent vide e-mail dated 23.09.2020 furnished the reconciliation of turnover as per list of home buyers and GSTR-3B for the period July, 2017 to September, 2019. The summary is given in Table-'A' mentioned at para 10 (viii) above. In view of the aforesaid reconciliation, the Respondent had himself submitted that he has discharged GST liability @ 8% on the demand of Rs. 25,18,10,095/- raised or advance received during the period 25.01.2018 to 30.09.2019. in case of discharging output GST liability @ 12%, the total Output tax liability would have been computed amounting to Rs. 6,88,39,939/- (Rs. 57,36,66,160/- @12% GST) whereas, total output liability as per GSTR-3B during the period 01.07.2017 to 30.09.2019 is only 6,13,00,275/- which is below the actual liability resulting into short payment of GST to the Central and State Government. Month-wise summary of GSTR-3B is given in Table-'B' below:

**Table - B**

S. No.	Period	Taxable Value	Output Tax Liability				Output Tax as % of Turnover
			IGST	CGST	SGST	TOTAL	
1	Jul-17	-	-	-	-	-	-
2	Aug-17	-	-	-	-	-	-
3	Sep-17	68,44,100	-	4,10,646	4,10,646	8,21,292	12.00%
4	Oct-17	11,35,000	-	68,100	68,100	1,36,200	12.00%
5	Nov-17	33,00,000	-	1,98,000	1,98,000	3,96,000	12.00%
6	Dec-17	423,87,900	-	25,43,274	25,43,274	50,86,548	12.00%
7	Jan-18	167,50,800	-	10,05,048	10,05,048	20,10,096	12.00%
8	Feb-18	109,51,650	-	6,57,099	6,57,099	13,14,198	12.00%
9	Mar-18	171,18,525	-	10,27,112	10,27,112	20,54,224	12.00%
10	Apr-18	103,08,015	-	4,12,321	4,12,321	8,24,642	8.00%
11	May-18	128,94,165	-	5,15,767	5,15,767	10,31,534	8.00%
12	Jun-18	200,02,296	-	8,00,092	8,00,092	16,00,184	8.00%
13	Jul-18	177,16,273	-	8,74,075	8,74,075	17,48,150	9.87%
14	Aug-18	198,23,331	-	10,03,264	10,03,264	20,06,528	10.12%
15	Sep-18	146,96,923	-	8,33,086	8,33,086	16,66,172	11.34%
16	Oct-18	140,42,423	-	7,56,450	7,56,450	15,12,900	10.77%
17	Nov-18	774,01,002	-	39,88,831	39,88,831	79,77,662	10.31%
18	Dec-18	84,38,675	-	3,98,547	3,98,547	7,97,094	9.45%
19	Jan-19	881,04,733	-	41,96,515	41,96,515	83,93,030	9.53%
20	Feb-19	67,49,001	-	2,72,580	2,72,580	5,45,160	8.08%
21	Mar-19	162,87,129	-	9,67,228	9,67,228	19,34,455	11.88%
22	Apr-19	463,69,000	-	21,55,760	21,55,760	43,11,520	9.30%
23	May-19	8,41,500	-	37,490	37,490	74,980	8.91%
24	Jun-19	363,16,641	-	21,78,998	21,78,998	43,57,997	12.00%
25	Jul-19	469,20,325	-	28,15,220	28,15,220	56,30,439	12.00%
26	Aug-19	290,65,838	-	17,43,950	17,43,950	34,87,901	12.00%
27	Sep-19	131,78,073	-	7,90,684	7,90,684	15,81,369	12.00%
<b>TOTAL</b>		<b>5776,43,318</b>	<b>-</b>	<b>306,50,137</b>	<b>306,50,137</b>	<b>613,00,275</b>	<b>10.61%</b>

Therefore, the submission of the Respondent as he had paid 12% GST to the Government for the entire project is frivolous, misleading and incorrect.

15. In the interest of natural justice, hearing on 27.07.2022 was granted to the interested parties wherein the Respondent and Applicant No. 1 have re-iterated their arguments made by them vide their earlier submissions which are already been taken on record.

16. The Authority has carefully considered the Reports of the DGAP, the submissions filed by the Respondent, Applicant No. 1 and the other material placed on record including submissions made during hearings. The Authority finds that the Applicant No. 1 had filed a complaint against Respondent alleging that the Respondent had not passed on the benefit of ITC to him by way of commensurate reduction in price on the purchase a flat in the "Bhagwati Eminence" Project which was executed by the Respondent at Nerul, in Navi Mumbai. The said complaint was examined by the Standing Committee on Anti-Profiteering and forwarded to the DGAP for detailed investigation on 09.10.2019, who vide his investigation Report dated 04.11.2020 furnished to this Authority, had stated that the Respondent is a



partnership firm consisting of 06 partners who are registered under Indian Partnership Act, 1932 has constructed/developed his project “**Bhagwati Eminence**” at Plot No. 7A, situated at Sector-13, Nerul, Navi Mumbai, which was allotted to the Respondent by CIDCO, containing 76 residential flats and 19 commercial shops, out of which 65 flats and 6 shops were sold as on 30.09.2019. As the input Tax Credit (ITC) @ 0.07% and 2.51% of the turnover was available to the Respondent during the pre-GST period and the post-GST period respectively as per the Table- A mentioned at para 10(viii) supra, therefore, the DGAP has concluded that the Respondent had benefited from the additional ITC to the tune of 2.44% (2.51% - 0.07%) of the turnover during the period from 01.07.2017 to 30.09.2019, which was required to be passed on to the flat/shop buyers of the said Project. The DGAP had also found that the Respondent has not reduced the basic prices of his flat/shops by 2.44% due to the additional benefit of ITC. Accordingly, he has contravened the provisions of Section 171 of the CGST Act, 2017 and Rules made thereunder. The DGAP had concluded that the benefit of Rs. 1,56,77,149/-(including GST@ 12%) was to be passed on by the Respondent to the flat/shop buyers for the period from 01.07.2017 to 31.03.2019 under the provisions of Section 171 of the CGST Act, 2017. The above computation of profiteering made by the DGAP is with respect to 65 flats and 6 shops which were booked till 30.09.2019 by the Respondent. Although, the Respondent had claimed to pass on an amount of Rs. 61,83,525/- to 21 home buyers but he failed to submit documentary evidence to substantiate his said claim.

17. The Authority finds that the DGAP has computed the ratio of CENVAT as a percentage of the turnover for the pre-GST period and compared it with the ratio of ITC to the turnover for the post-GST period, and then computed the percentage of the benefit of additional ITC which the Respondent was required to pass on to the flat/shop buyers. The above ratios had been computed by the DGAP based on the data/details provided by the Respondent, which have been duly verified from his Service Tax and GST Returns filed by him for the period April 2016 to June 2017 and July 2017 to September 2019

respectively. Since, the ratios calculated by the DGAP are based on the factual record submitted by the Respondent; hence they can be relied upon while computing the profiteered amount.

18. The additional benefit of ITC availed by the Respondent during the period July 2017 to September 2019 which was required to be passed on to his flat/shop buyers, has been correctly calculated by the DGAP which is based on the factual records/information furnished by the Respondent, and according to the Methodology which has been approved by this Authority in all the cases where benefit of ITC, is required to be passed on under the provisions of Section 171 of the CGST Act, 2017.

19. The Respondents in their written submissions and during the course of the personal hearing has argued that he has already passed on 3% of GST by charging 9% instead of prescribed rate of 12% GST, to the Applicant No. 1 whereas it is observed that the Respondent had collected 9% GST from the Applicant No. 1 but discharged only 8% GST to the Government exchequer on the Applicant No. 1's flat. Moreover, as per the details of GSTR-3B (as mentioned in Table- B above), the Respondent had discharged GST of Rs. 6,13,00,275/- on the taxable value of Rs. 57,36,66,160/- for the period from 01.07.2017 to 30.09.2017 whereas the total Output tax liability @ 12% would amount to Rs. 6,88,39,939/- on the said taxable value for the aforesaid period. The DGAP has also observed that even after the impugned project "Bhagwati Eminence" was an "other than affordable housing project", the Respondent had discharged 8% GST on 38 flats/units having area of 47.01 sq. mtrs. which were covering only 35.59% of total FSI. Therefore, in view of the above, this Authority observes that Respondent has actually collected higher amounts of GST from the buyers/recipients of supply than the amounts paid to the Government. In addition, this Authority finds that, it is evident from such calculation based on record and in the context of the applicable statutory provisions and tax rates that, the Respondent's contention of having passed on the benefit of additional ITC (available to him in the GST regime ) by way of non-collection of a part of GST from his recipients of supply, albeit having

paid such part from his own resources, is incorrect, unsubstantiated and untenable.

20. The Respondent has claimed Cenvat credit of Service Tax amounting to Rs.3,58,20,322/- paid to CIDCO towards one time lease premium whereas, Section 66D(d)(iv) of the Finance Act 1994, covers 'renting or leasing of agro machinery or vacant land with or without a structure incidental to its use' under the Negative list of services. Since leasing of vacant land was exempted from Service Tax and covered in the Negative list at the relevant time, no credit of any 'amount' paid towards one time lease premium for vacant land, can be allowed as per Finance Act 1994 readwith Cenvat Credit Rules 2004. The Respondent has not produced any documents to this Authority that Department has assessed the said ST-3 Returns of claiming of Cenvat credit and the same was allowed. Hence, this Authority agrees with the Reports of the DGAP in this regard and holds that, the amounts of pre GST and GST period credits and calculations as tabulated, in Tables A & B of the DGAP Report as reproduced above, are correct and in accordance with the methodology adopted by the DGAP in similar cases and accepted by this Authority.

21. In view of the above, discussion, findings and after taking into consideration the provisions of the law and the submissions made by the Respondents, the issues to be decided are as under:-

- 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.

21. In view of the above facts and findings discussed in the earlier paras, the Authority determines that the Respondent has realized an additional amount of Rs. 1,56,77,149/- which includes both the profiteered amount

@ 2.44% of the taxable amount (base price) and GST @ 12% on the said profiteered amount from the 71 home buyers/shop buyers/ recipients of supply including Applicant No. 1 during the period from 01.07.2017 to 30.09.2019 which was required to be passed on the eligible home buyers of his impugned project. The details of eligible home buyers/shop buyers/ recipients of supply to whom supply has been made by Respondent in the impugned Project and from whom additional amount on account of benefit of ITC had been realized by the Respondent during the aforesaid period along with details of such additional amount is given in **Annexure-‘A’** to this Order. Since, all the home buyers/shop buyers/ recipients of supply are identifiable as per the documents placed on record and therefore, the Respondent is directed to pass on the profiteered amount along with the interest @ 18% per annum (from the dates from which the said profiteered amount was collected by him from each of them till the date such amount is passed on/returned/refunded), if not already passed on/returned/refunded, within a period of 3 months from the date of passing of this Order as per the details mentioned in **Annexure-‘A’**, failing which the said amounts shall be recovered as per the provisions of the CGST Act, 2017.

22. Accordingly, this Authority under Rule 133 (3) (a) of the CGST Rules, 2017 orders that the Respondents shall reduce the prices to be realized from the home buyers/shop buyers/ recipients of supply in the above Project commensurate with the benefit of ITC received by him as detailed above.

23. This Authority as per Rule 136 of the CGST Rules 2017 directs the Commissioners of CGST/SGST Mumbai, Maharashtra to monitor compliance of this order under the supervision of the DGAP by ensuring that the amount profiteered by the Respondent as determined by the Authority, is passed on to all the eligible home buyers/shop buyers/ recipients of supply. It may be ensured that the benefit of ITC is passed on to each home buyer/shop buyer/ recipient of supply as per Annexure-A attached with this Order along with interest @18% as prescribed. In this regard an advertisement of appropriate size to be visible to the public may also be published in minimum of two local Newspapers/vernacular press in Hindi/English/local language with the details

i.e. Name of Respondent M/s Bhagwati Infra, 1306, Real Tech Park, Plot No. 39/2, Sector- 30A, opp. Vashi Railway Station, Vashi, Navi Mumbai- 400 705, for their Project "Bhagwati Eminence", situated at Plot 7/7A, Sector-13, Nerul, Navi Mumbai and amount of profiteering Rs. 1,56,77,149/- , so that his concerned home buyers/shop buyers/ recipients of supply can claim the benefit of ITC if not passed on. Home buyers/shop buyers/ recipients of supply may also be informed that the detailed NAA Order is available on Authority's website [www.naa.gov.in](http://www.naa.gov.in).

24. Contact details of concerned Jurisdictional CGST/SGST Commissioner may also be advertised through the said advertisement. A report in compliance of this Order shall be submitted to this Authority and the DGAP by the Commissioners CGST /SGST within a period of 4 months from the date of receipt of this Order.

25. For the reasons mentioned hereinabove and in the given facts and circumstances and also stated position of law we find that the Respondent has denied the benefit of ITC to the buyers of his flats/customers/recipients in contravention of the provisions of Section 171 (1) of the CGST Act, 2017. The Authority holds that the Respondent has committed an offence by violating the provisions of Section 171 (1) during the period from 01.07.2017 to 30.09.2019, and therefore, he is liable for imposition of penalty under the provisions of Section 171 (3A) of the above Act. However, perusal of the provisions of the said Section 171 (3A) shows that it has been inserted in the CGST Act, 2017 w.e.f. 01.01.2020 vide Section 112 of the Finance Act, 2019 and it was not in operation during the period from 01.07.2017 to 30.09.2019. Hence, the said penalty under Section 171 (3A) cannot be imposed on the Respondent retrospectively i.e. with respect to the period to which this Order relates.

26. The present investigation has been conducted up to 30.09.2019 only. However, the Respondent is liable to pass on the benefit of ITC which would become available to him till the date of issue of Completion Certificate. Accordingly, the concerned jurisdictional Commissioner CGST/SGST are directed to ensure that the Respondent

passes on the benefit of ITC to the eligible home buyers/shop buyers/ recipients of supply as per the methodology approved by this Authority in the present case and submit report to this Authority through the DGAP. The Applicant No. 1 or any other interested party/person shall also be at liberty to file complaint against the Respondent before the Maharashtra State Screening Committee in case the remaining benefit of ITC is not passed on to them.

27. In view of facts discussed hereinabove and the findings thereof, the Authority has a reason to believe that since the Respondent has been found to have contravened the provisions of Section 171 of the CGST Act 2017 in respect of the subject project "Bhagwati Eminence" and hence there is every possibility that similar contravention may have taken place with his other projects. This Authority in terms of Rule 133 (5)(a) of the CGST Rules 2017 also directs the DGAP to investigate profiteering in relation to other Projects executed by the Respondent if any, under the provision of section 171 of the CGST Act 2017.

28. In view of prevailing Covid pandemic, the Hon'ble Supreme Court had by its Order dated 10.01.2022 passed in M. A. no. 21/2022 in M.A. no. 665/2021 in Suo Moto Writ Petition (C) No. 3 of 2020 directed as under:-

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

*(ii). Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022.*

*(iii). In case where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event, the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.*

(iv). It is further clarified that the period from 15.03.2020 till 28.02.2022 shall stand excluded in computing the period under Section 23(4) and 29A of the Arbitration and Conciliation Act 1996, Section 12A of the Commercial Courts Act 2015 and provisos (b) and (c) of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period (s) of limitation for instituting proceedings over limits (within which the court or tribunal can condone delay) and termination of proceedings”

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

29. A copy each of this order be supplied, free of cost, to the DGAP, the Applicant No. 1, the Respondent, Commissioners CGST/SGST, Mumbai/Maharashtra, the Secretary (Town and Country Planning) Govt. of Maharashtra and Maharashtra RERA for necessary action. File be consigned after completion.

Annexure:- Annexure-‘A’ in Page-1.

Sd-  
(Amand Shah)  
Technical Member &  
Chairman

Sd-  
(Pramod Kumar Singh)  
Technical Member



Sd-  
(Hitesh Shah)  
Technical Member

Certified copy

(Dinesh Meena)  
Secretary, NAA

File No. 22011/NAA/224/Bhagwati/2020 | 8606 — date:-02.09.2022

Copy to:-

1. M/s. Bhagwati Infra, 1306, Real Tech Park, Plot No.39/2, Sector-30A, Opp. Vashi Railway Station, Vashi, Navi Mumbai-400705.
2. Sh. Dheeraj Shetty- dynamicdhiraj@gmail.com
3. Director General of Anti profiteering, Central Board of Indirect Taxes & Customs, 2<sup>nd</sup> Floor, Bhai Vir Singh Sahitya Sadn, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.
4. The Chief Commissioner CGST Zone Mumbai, GST Bhavan, 115, M.K. Road, Opp. Churgate Station, Mumbai-400020

5. The Commissioner, Sales Tax/SGST, Maharashtra State, 8<sup>th</sup> Floor, Vikrikar Bhavan, Mazgaon, Mumbai-400010.
6. Maharashtra Real Estate Regulatory Authority, 3rd Floor, A-Wing, Slum Rehabilitation Authority, Administrative Building, Anant Kanekar Marg, Bandra (E), Mumbai 400051.
7. The Secretary, Urban Development Dept. Government of Maharashtra, Room No. 423 (Main), Mumbai 400 032,
8. NAA Website.
9. Guard File.





S.No.	Name of Customer	Unit No.	(Carpet Area) as per agreement	Total Agreement Value /Allotment Value (excluding Taxes) (in Rs.)	Gross Demand raised and Advances post GST (i.e.During 01.07.2017 to 30.09.2019)	GST @ 12% on BSP	Actual Amount Billed/Paid	Profiteering Amount to be passed on @2.44%
A	B	C	D	E	F	G=F*12%	H=F+G	H*2.44%
1	GOURAV ASHOK VASHISTHA	0401	67.33	17,000,000	15,300,000	1,836,000	17,136,000	418,118
2	DIVYA SADHU SHETTY	0402	47.01	14,840,000	13,356,000	1,602,720	14,958,720	364,993
3	SHAILU VARGHESE	0403	47.01	11,000,000	9,900,000	1,188,000	11,088,000	270,547
4	Vasavan Gopakumar & Hema N.	0404	67.33	13,302,800	10,372,520	1,244,702	11,617,222	283,460
5	KAUSHIK KAZI	0501	67.33	17,125,000	13,843,400	1,661,208	15,504,608	378,312
6	DEEPTI GUPTA	0502	47.01	8,200,000	2,628,425	315,411	2,943,836	71,830
7	MANJIRI NITIN PRABHUGAONKAR	0503	47.01	13,500,000	1,100,000	132,000	1,232,000	30,061
8	SANTHA NAIR	0504	67.33	9,915,000	2,673,500	320,820	2,994,320	73,061
9	Arpit Gupta	0601	67.33	12,000,000	10,115,250	1,213,830	11,329,080	276,430
10	jitendra gupta	0602	47.01	10,000,000	10,000,000	1,200,000	11,200,000	273,280
11	VIDHYASANKAR	0603	47.01	11,440,000	2,076,400	249,168	2,325,568	56,744
12	MANOJ SHARMA	0604	67.33	12,200,000	4,600,000	552,000	5,152,000	125,709
13	VIRENDRA VERMA	0701	67.33	11,243,500	9,070,065	1,088,408	10,158,473	247,867
14	SHANKAR UGHADMATHE	0704	67.33	16,085,000	4,134,000	496,080	4,630,080	112,974
15	SHWETANK CHAUBEY	0801	67.33	10,896,000	9,706,400	1,164,768	10,871,168	265,256
16	M/S.ENABLER BUSINESS SOLUTIONS PVT. LTD.	0802	47.01	7,680,000	4,412,000	529,440	4,941,440	120,571
17	Rajesh Nair	0803	47.01	7,680,000	2,112,000	253,440	2,365,440	57,717
18	KRISHNAN UMASHANKAR	0804	67.33	10,170,000	4,453,000	534,360	4,987,360	121,692
19	satheesh panicker	0901	67.33	17,500,000	15,750,000	1,890,000	17,640,000	430,416
20	RADHA MADHUSUDHANAN NAIR	0902	47.01	6,880,000	6,192,000	743,040	6,935,040	169,215
21	SRIDHAR LAKSHMINARASIMHA	0903	47.01	9,950,000	2,555,000	306,600	2,861,600	69,823
22	Renu R Dahiya	0904	67.33	9,500,000	8,250,000	990,000	9,240,000	225,456
23	TAKSH MADAN	1001	67.33	18,100,000	16,290,000	1,954,800	18,244,800	445,173
24	SAJI JACOB MATHAI	1003	47.01	13,660,000	12,294,000	1,475,280	13,769,280	335,970
25	SAJI JACOB MATHAI	1004	67.33	14,640,000	2,424,800	290,976	2,715,776	66,265
26	RAMANATHAN NARAYAN SWAMY	1101	67.33	20,670,000	18,303,000	2,196,360	20,499,360	500,184
27	MAHESH RAJARAM PATADE	1102	47.01	10,000,000	9,000,000	1,080,000	10,080,000	245,952
28	THAYIL NARAYAN R. NAIR	1103	47.01	7,000,000	5,664,200	679,704	6,343,904	154,791
29	BHARAT BOOK BUREAU	1201	67.33	17,000,000	2,100,000	252,000	2,352,000	57,389
30	Dhanraj Choudhary	1202	47.01	10,000,000	8,300,000	996,000	9,296,000	226,822
31	Shaheen Wasim Chougley	1203	47.01	12,000,000	5,050,000	606,000	5,656,000	138,006
32	MUZANAMIL NIZAMUDDIN MUKADAM	1204	67.33	18,036,750	12,333,075	1,479,969	13,813,044	337,038
33	VIJAYKUMAR OTTAPATH	1301	67.33	15,123,000	200,000	24,000	224,000	5,466
34	SANTOSH VASANT MUNDHE	1302	47.01	11,000,000	9,900,000	1,188,000	11,088,000	270,547
35	MR.P.N.MADHUSUDHANAN PILLAI	1303	47.01	11,460,000	6,414,870	769,784	7,184,654	175,306
36	aarti prasad mokal	1402	47.01	13,500,000	12,150,000	1,458,000	13,608,000	332,035
37	CHAITANYA SHIRISH BHARGAVE	1403	47.01	13,880,000	12,492,000	1,499,040	13,991,040	341,381
38	SADANAND A. KALLIANPUR	1404	67.33	9,950,000	1,200,000	144,000	1,344,000	32,794
39	Nagesh K S V	1501	67.33	17,000,000	10,506,000	1,260,720	11,766,720	287,108
40	SARITA MEENA	1502	47.01	9,500,000	8,550,000	1,026,000	9,576,000	233,654
41	MADHAVAN NAIR	1503	47.01	13,880,000	13,220,000	1,586,400	14,806,400	361,276
42	PANAATHIL S. NAIR	1504	67.33	16,910,000	4,463,000	535,560	4,998,560	121,965
43	Abhijit Subhash Shirodkar	1601	67.33	9,930,000	2,437,000	292,440	2,729,440	66,598
44	MRS.RACHNA UDAY KUMTHEKAR	1602	47.01	15,750,000	14,175,000	1,701,000	15,876,000	387,374
45	JAI PRAKASH SINGH	1603	47.01	15,820,000	14,238,000	1,708,560	15,946,560	389,096
46	ARJUN AWATE	1604	67.33	14,000,000	13,190,000	1,582,800	14,772,800	360,456
47	SAMEER NAIR	1701	67.33	16,500,000	5,565,500	667,860	6,233,360	152,094
48	MUKESH KARN	1702	47.01	10,500,000	9,450,000	1,134,000	10,584,000	258,250
49	RAJESH SHINDE	1703	47.01	7,280,000	2,300,000	276,000	2,576,000	62,854
50	RAJESH SHINDE	1704	67.33	11,418,000	3,427,085	411,250	3,838,335	93,655
51	GOVERDHAN BHUTADA	1801	67.33	15,411,700	13,870,530	1,664,464	15,534,994	379,054
52	GOVERDHAN BHUTADA	1802	47.01	10,140,000	9,126,000	1,095,120	10,221,120	249,395
53	RAJESH SINGH	1803	47.01	14,650,000	13,185,000	1,582,200	14,767,200	360,320
54	RAJESH SINGH	1804	67.33	13,761,000	6,353,700	762,444	7,116,144	173,634
55	ALLIYA IMTIAS PASHA	1901	67.33	17,000,000	12,342,000	1,481,040	13,823,040	337,282
56	NOORULAMIN YOOSUF KAZEE	1902	47.01	13,700,000	12,330,000	1,479,600	13,809,600	336,954
57	LAXMAN MURABHAI RAJPUT	1903	47.01	10,000,000	9,000,000	1,080,000	10,080,000	245,952
58	HINDUSTAN MASALA MILL	2001	67.33	13,600,000	12,400,000	1,488,000	13,888,000	338,867
59	HINDUSTAN MASALA MILL	2002	47.01	9,600,000	7,323,000	878,760	8,201,760	200,123
60	MANJUNATH PRABHU	2003	47.01	11,820,000	10,638,000	1,276,560	11,914,560	290,715
61	MANJUNATH PRABHU	2004	67.33	15,370,500	3,207,200	384,864	3,592,064	87,646
62	AMAR VIJAYKUMAR PATNKAR	2101	67.33	13,000,000	11,700,000	1,404,000	13,104,000	319,738
63	AMAR VIJAYKUMAR PATNKAR	2102	47.01	10,000,000	9,000,000	1,080,000	10,080,000	245,952
64	PREM PAL SINGH	2103	47.01	10,500,000	100,000	12,000	112,000	2,733
65	MRIDULA ASHWINI SESHADRI	2201	67.33	15,000,000	13,500,000	1,620,000	15,120,000	368,928
66	THEJOKRISHNA PAMMI	SHOP-04	35.37	12,726,000	12,098,740	1,451,849	13,550,589	330,634
67	DAIZY VERMA	SHOP-08	26.61	4,980,000	2,660,000	319,200	2,979,200	72,692
68	BHUSHAN HARIRAM DALVI	SHOP-09	20.79	6,000,000	240,000	28,800	268,800	6,559
69	JAYNTHY SUNIL SHARMA	SHOP-12	18.43	5,977,250	5,977,250	717,270	6,694,520	163,346
70	AAKASH SUNIL SHARMA	SHOP-13	17.64	5,977,250	5,977,250	717,270	6,694,520	163,346
71	PRATIMA R SHAKYAWAR	SHOP-14	16.85	4,500,000	4,400,000	528,000	4,928,000	120,243
TOTAL=				866328750	573666160	68839939.2	642506099.2	1,56,77,149