



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

Case No.	:	17/2023
Date of Institution	:	30.09.2020
Date of Order	:	14.09.2023

In the matter of:

1. Sh. Vivek Kumar, 126, Block –C, Anisha Grange Apartment, C V Raman Nagar, Bengaluru- 560093.
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.

Applicant

Versus

M/s Bhartiya Urban Pvt. Ltd. (Formerly Known as M/s. Bhartiya City Developers Pvt. Ltd.), No. 1/5, Palace Road, Bengaluru- 560001.

Respondent

Coram:-

1. Smt. Ravneet Kaur, Chairperson
2. Dr. Sangeeta Verma, Member

ORDER

1. The National Anti-Profiteering Authority (NAA) vide Interim Order No. 12/2019 dated 15.10.2019 in this matter had passed the following order:-

"14. The Authority accordingly directs the DGAP under Rule 133(4) to further investigate the matter by taking into consideration the fact that the Occupancy Certificates for all the 2415 units have already been received up to 28.07.2019

which Respondent has himself admitted. The allegation of the Applicant No. 1 that the Respondent has been availing the ITC even after receiving of OCs but has not been passing on the benefit of ITC to the buyers also needs to be investigated.

15. Since there are many other projects under the single Registration No. i.e. 29AAACZ3571A1ZF, the Authority directs the DGAP under Rule 133(5) to investigate all the other projects of the Respondent under the same GST registration which have not yet been investigated from the perspective of Section 171 of the CGST Act, 2017 and submit the complete investigation report for all the Projects under this single GST Registration."

2. The brief facts of the case have been mentioned in the NAA's I.O. No. 12/2019 dated 15.10.2019 and the same are reproduced below:
 - i. A Report dated 07.03.2019, was received on 14.03.2019 from the Applicant No. 2 i.e. the Director General of Anti-Profiteering (DGAP) after a detailed investigation under Rule 129 (6) of the Central Goods & Service Tax (CGST) Rules, 2017. In the present case the Karnataka State Screening Committee on Anti-profiteering, vide the minutes of its meeting held on 31.07.2018 had forwarded an application dated 25.07.2018 filed by the Applicant No. 1 to the Standing Committee on Anti-profiteering under Rule 128 of the CGST Rules, 2017. The Applicant No. 1 stated that the Respondent had resorted to profiteering in respect of supply of Construction Service related to the purchase of Flat No. 11407, Tower-I, in the Respondent's project "Nikoo Homes-I", Bhartiya City, Chokkanahalli, Yelahanka, Bengaluru, Karnataka-560054. The Applicant No. 1 had also alleged that the Respondent had not passed on the benefit of Input Tax Credit (ITC) by way of commensurate reduction in the price of the flat purchased by him, on implementation of GST w.e.f. 01.07.2017.
 - ii. The DGAP had issued a notice dated 26.10.2018 and called upon the Respondent under Rule 129 of the CGST Rules, 2017 to reply as to whether the benefit of ITC had been passed on by him to the recipients by way of commensurate reduction in prices and also asked him to suo-moto determine the quantum of benefit which was not passed on.

- iii. The period of the DGAP's investigation in this case was from 01.07.2017 to 31.08.2018.
- iv. The Respondent had submitted his replies to the DGAP vide letters/emails dated 16.10.2018, 12.11.2018 and 12.02.2019. The Respondent had stated before the DGAP that the Applicant No. 1 had purchased an apartment in Nikoo Homes-I project, which comprised of 2,415 residential units in 10 Towers and the total area of the project was 32,28,666 sq. ft. and the project had commenced in May, 2013.
- v. The Respondent had submitted copies of all demand letters, Sale Agreement/Contract issued to the above Applicant, details of turnover, output tax liability, GST payable and input tax credit availed, copy of Occupancy Certificate for the project "Nikoo Homes- I" and list of home buyers in the project "Nikoo Homes-I" to the DGAP.
- vi. The DGAP in his Report had observed that the Respondent vide letter dated 12.11.2018 had submitted copies of Sale Agreement dated 11.03.2014, agreement to build and the demand letters for the sale of flat no. 11407 to the above Applicant, measuring 1,265 square feet, at the basic sale price of Rs. 5,070/- per square feet.
- vii. Further, for the calculation of the profiteering, the DGAP had claimed that the ITC as a percentage of the turnover available to the Respondent during the pre-GST period (April, 2016 to June, 2017) was 9.95% and during the post-GST period (July, 2017 to August, 2018), it was 9.25%, which showed that the Respondent had not benefited from any additional ITC. Thus, the Respondent, post introduction of GST, had availed lesser ITC to the extent of 0.70% [9.95% (-) 9.25%] of the turnover, as compared to the pre-GST period. Therefore, the DGAP had stated that the allegation of profiteering had not been established against the Respondent from the rate of tax angle, by comparing the applicable tax rates in the pre-GST and post-GST periods. In the pre-GST period (April, 2016 to June, 2017), Service Tax@ 6% and VAT@ 10.15% were payable on the construction service and in the post-GST period (July, 2017 to August, 2018), the GST rate was 18% on Construction Service (without 1/3rd abatement on account of land value). Therefore, he had concluded that the applicable tax rate on

Construction Services had been increased from 16.15% in the pre-GST period to 18% in the post-GST period. Thus, there was an increase in the rate of tax and there was no additional benefit of ITC with the implementation of GST w.e.f. 01.07.2017, hence the provisions of Section 171 of the CGST Act, 2017 were not attracted.

- viii. The above Report was considered by the NAA in its meeting held on 19.03.2019 and it was decided to hear the Applicant No. 1 on 04.04.2019, but the Applicant No. 1 was not present during the scheduled hearing. Instead, the Applicant No. 1 vide his email dated 04.04.2019 submitted the demand letters from the Respondent for installments No. 12 & 13 and intimated that the Respondent had charged GST @18% in the demand letters. Earlier the Respondent used to charge VAT + ST + Cess @10.1%. Therefore, he had to bear an extra tax burden of $18\% - 10.1\% = 7.9\%$ (Rs. 91,627) when the Central Government had reduced the GST rate from 12% to 5%.
- ix. Supplementary Report was sought from the DGAP on the issues raised by the Applicant No. 1 through his submissions dated 04.04.2019. The DGAP vide his Report dated 12.04.2019 intimated that the issue raised by the Applicant No. 1 was that there was an extra burden of 13% due to non-opting for the new scheme of paying GST @5% by the Respondent. In this regard, the DGAP stated that as per Notification No. 03/2019-Central Tax (Rate) dated 29.03.2019, the suppliers of Construction Service were given an option to pay tax on construction of apartments at the old rate of 18% with ITC or at the new rate of 7.50% without ITC. Therefore, if the supplier would have chosen the option for paying tax at the new rate i.e. @7.50% w.e.f. 01.04.2019, he would be denied ITC. The DGAP has further claimed that if the Respondent had chosen option 2 of paying tax @ 7.50% without ITC, there would have been a reduction of 0.56% in the total liability, as against 13% reduction as claimed by the above Applicant, hence, the claim of the Applicant no. 1 was not sustainable.
- x. After considering the reply submitted by the DGAP, the NAA called the Applicants for hearing on 24.04.2019 but the Applicant no. 1 did not appear for the same. The DGAP was represented by Sh. Bhupender Goyal,

Assistant Director (Cost). In the hearing, it was decided to call the Karnataka State Screening Committee (KSSC) on 10.05.2019. The KSSC vide its letter dated 08.05.2019 had requested exemption from appearance and forwarded the minutes of the meeting dated 31.07.2018 and submitted that it did not have any more material to express further opinion in the case.

- xi. Third hearing in the case was held on 10.05.2019, but the Applicant No. 1 was not present during the scheduled hearing. Instead, the Applicant No. 1 vide his email dated 10.05.2019 had submitted that Respondent's claim that 93% of project work was completed on 30.06.2017 was incorrect. He further added that the claim of the Respondent that he had started handing over the units to customers before 30.06.2017 was wrong and he had hidden the true facts about the project. He further submitted that there were 10 Towers comprising of 2415 flats in the project Nikoo Homes-I. Each Tower comprised of approx. 250 flats and each Tower was like an apartment/project in itself. The Respondent had completed each Tower one by one and gave possession to the buyers accordingly. The Applicant's Flat No. 11407 was in Tower 1 which was completed in the end of the project by the Respondent. The Respondent had received Occupancy Certificates (OC) from Bruhat Bengaluru Mahanagar Palike (BBMP) starting from Tower 9 to Tower 1 in phases. The OC for Tower No. 7, 8, 9 (called Wing G, H, I) was received on 20-03-2017, for Tower No. 5, 6 (called Wing E, F) was received on 04-12-2017, for Tower No. 3, 4, 10 (called Wing C, D, J) was received on 23-04-2018 and for Tower No. 1, 2 (called Wing A, B) was received on 28-07-2018. Post-GST, electrical, plumbing, carpentry, garden work, painting and multiple other works were done by the sub-contractors for the Respondent and the Respondent had availed ITC on these. He should have passed on that ITC to the buyers but he was not willing to pass on ITC benefit availed by him. He had further submitted his reply to the Point No. 15 of the DGAP's Report dated 07.03.2019 that Tower No. 1-9 were completed in multiple phases whereas Tower No. 1-6 were completed post-GST implementation. The Respondent had not disclosed the details of sold and unsold inventory which he should have provided for correct calculation of ITC. The Applicant No. 1 had

further submitted reply to Point No. 16 of the DGAP's Report dated 07.03.2019 stating that the Respondent had provided the information of the project as a whole and he did not disclose Tower-wise information in the Table, though Towers were completed in multiple phases. He had further added that due to unavailability of Tower-wise information, exact quantum of ITC benefit which was to be passed on to the buyers could not be calculated.

- xii. On Perusal of the above submissions it was evident that the Applicant No. 1 had raised substantive issues pertaining to the passing of the benefit of ITC which needed to be addressed. In the interest of equity and justice, a notice was issued to the Respondent on 01.08.2019 to explain why he should not be held liable to pay the benefit of ITC to the above Applicant as well as to the other house buyers and consequently held to have violated the provisions of Section 171 of the CGST Act, 2017. He was also directed to submit the relevant documents/records viz. copies of Occupancy Certificates (OCs) of all the Towers of the project, the stage of construction of each of the Towers of the project, details of the Service Tax, VAT and GST Returns for the entire registration with project wise division, the Tower wise details of apartments/flats/residential units/commercial units/other than residential units sold and unsold as on date and as against their respective OCs and copy of project report>Returns submitted to RERA. He was afforded opportunities of hearing on 09.08.2019 and 28.08.2019 to file his submissions on the objections raised by the above Applicant. The Respondent in his submissions dated 28.08.2019 had submitted the following information:
- a. Copies of OCs for all the towers
 - b. Details of Service Tax, VAT and GST Returns
 - c. Tower-wise details of units sold and unsold
 - d. Copies of RC, Reports and Returns under RERA
- xiii. The NAA carefully perused the DGAP's Report, the written submissions of the Applicant No. 1 and all the other material placed on record and found that:

- 1) As per the submissions filed by the Respondent himself on 28.08.2019 it is observed that the Occupancy Certificates (OCs) for all the Residential Units have been received as per the schedule given in below Table:-

Sr. No.	No. of Units	Wings	Date of Issuance
1	837	G, H and I	20-03-2017
2	514	E and F	04-12-2017
3	508	C, D, and J	23-04-2018
4	556	A and B	28-07-2018
TOTAL	2415		

As per the above Table, OCs for all the 2415 units had been received till 28.07.2018. Therefore, the final calculation of the ITC benefit which needed to be passed on to the buyers should have been incorporated in the DGAP's Report dated 07.03.2019 as the period covered in the Report was from 1.7.2017 to 31.08.2018.

Further, it was observed that the Respondent had obtained all the OCs up to 28.07.2018 and till then, he had sold 2368 flats out of 2415 flats but he had not reversed the proportionate ITC related to the unsold units.

- 2) Since the OCs had been received in this case, calculation of additional ITC benefit which needed to be passed on by the Respondent could be different from other cases where additional ITC for a specific period and for specific buyers had been calculated. In this case, additional ITC benefits by considering the ITC available for complete period of construction of the project should have been calculated.
- 3) Further, it was observed that the Respondent had been availing the ITC even after receiving Occupancy Certificates. Therefore, additional ITC, which had been availed by the Respondent, after receiving the OCs, needed to be verified and dealt with from the perspective of Section 171 of the CGST Act, 2017.
- 4) The Respondent vide his submissions, filed through e-mail dated 06.09.2019, submitted the following information under the heading "Details matching with the Returns – In line with what DGAP has considered in their report for Nikoo-I":-

Under GST Law						
July '17 to Mar '18				April '18 to Aug '18		
Particulars	Nikoo-I	Othrs	Total	Nikoo-I	Others	Total
Land	13,61,380	1,00,75,02,231	1,00,88,63,611	34,67,888	47,89,93,005	48,24,60,893
Sinking	3,13,72,942		3,13,72,942	3,55,52,202		3,55,52,202
Premium	94,58,100	2,63,05,789	3,57,63,889	89,71,005	4,66,61,727	5,56,32,732
City Infra	3,56,30,600		3,56,30,600	4,21,11,600		4,21,11,600
CAM	3,00,11,562		3,00,11,562	3,55,52,206		3,55,52,206
Construction	33,86,06,529	84,39,18,257	1,18,25,24,786	22,70,41,090	1,51,87,96,388	1,74,58,37,478
Floorrise	1,61,55,279	4,97,21,709	6,58,76,988	1,14,25,503	8,46,97,951	9,61,23,454
Carparking	2,45,15,767	5,93,84,107	8,38,99,874	1,76,71,706	10,71,70,343	12,48,42,049
Addl Carpark	2,03,27,763		2,03,27,763	36,03,850		36,03,850
BWSSB	14,25,22,600		14,25,22,600	16,84,46,400		16,84,46,400
Club House	6,69,75,000		6,69,75,000	8,13,50,000		8,13,50,000
Kitchen	5,52,90,000		5,52,90,000	6,90,68,320		6,90,68,320
Others		9,41,36,664	9,41,36,664		4,85,22,318	4,85,22,318
Grand Total	77,22,27,522	2,08,09,68,757	2,85,31,96,279	70,42,61,770	2,28,48,41,732	2,98,91,03,502
Input Tax Credit						
Transitional Credit	21,02,69,946		21,02,69,946			
GST	16,44,73,020	17,75,60,674	34,20,33,694	5,23,28,981	15,89,44,691	21,12,73,672
Total Credit Available	37,47,42,966	17,75,60,674	55,23,03,640	5,23,28,981	15,89,44,691	21,12,73,672

Under VAT Law						
July '17 to Mar '18				April '18 to Aug '18		
Particulars	Nikoo-I	Othrs	Total	Nikoo-I	Others	Total
Land	32,53,633	1,65,76,27,282	1,66,08,80,915	2,78,43,368	59,23,62,104	62,02,05,472
Sinking	16,96,776		16,96,776	3,16,14,574		3,16,14,574
Premium	6,39,83,334	31,247	6,40,14,581	1,90,36,476	1,34,772	1,91,71,248
City Infra	32,09,386		32,09,386	5,07,56,077		5,07,56,077
CAM	19,16,146		19,16,146	4,35,40,192		4,35,40,192
Construction	2,06,97,63,842	1,65,79,336	2,08,63,43,178	50,83,09,019	19,23,37,978	70,06,46,997
Floorrise	8,48,82,501	7,78,260	8,56,60,761	2,97,95,801	10,44,307	3,08,40,108
Carparking	13,99,78,837	9,41,291	14,09,20,128	4,67,74,882	12,20,796	4,79,95,678
Addl Carpark	61,49,686		61,49,686	7,67,745		7,67,745
BWSSB	1,05,41,934		1,05,41,934	18,51,30,085		18,51,30,085
Club House	49,26,795		49,26,795	7,96,68,899		7,96,68,899
Kitchen	30,32,541		30,32,541	7,20,33,469		7,20,33,469
Others		7,41,40,005	7,41,40,005		84,03,998	84,03,998
Grand Total	2,39,33,35,411	1,75,00,97,421	4,14,34,32,832	1,09,52,70,587	79,55,03,955	1,89,07,74,542
Input Tax Credit						
VAT on Purchase	5,79,47,743	76,17,422	6,55,65,165	68,95,351	75,85,041	1,44,80,392
VAT on Subcontractor	11,58,18,923	2,29,34,155	13,87,53,078	2,87,20,571	66,56,467	3,53,77,038
Total Credit Available	17,37,66,666	3,05,51,577	20,43,18,243	3,56,15,922	1,42,41,508	4,98,57,430

Under Service Tax Law						
Particulars	July '17 to Mar '18			April '18 to Aug '18		
	Nikoo-I	Othrs	Total	Nikoo-I	Others	Total
Land	32,53,633	1,65,76,27,282	1,66,08,80,915	2,78,43,368	59,23,62,104	62,02,05,472
Sinking	16,96,776		16,96,776	3,16,14,574		3,16,14,574
Premium	6,39,83,334	31,247	6,40,14,581	1,90,36,476	1,34,772	1,91,71,248
City Infra	32,09,386		32,09,386	5,07,56,077		5,07,56,077
CAM	19,16,146		19,16,146	4,35,40,192		4,35,40,192
Construction	2,06,97,63,842	1,65,79,336	2,08,63,43,178	50,83,09,019	19,23,37,978	70,06,46,997
Floorrise	8,48,82,501	7,78,260	8,56,60,761	2,97,95,801	10,44,307	3,08,40,108
Carparking	13,99,78,837	9,41,291	14,09,20,128	4,67,74,882	12,20,796	4,79,95,678
Addl Carpark	61,49,686		61,49,686	7,67,745		7,67,745
BWSSB	1,05,41,934		1,05,41,934	18,51,30,085		18,51,30,085
Club House	49,26,795		49,26,795	7,96,68,899		7,96,68,899
Kitchen	30,32,541		30,32,541	7,20,33,469		7,20,33,469
Cancellation Charges		1,12,08,896	1,12,08,896	15,42,605		15,42,605
Rental Charges		11,36,436	11,36,436			
Assignment Charges		38,84,602	38,84,602	11,91,606		11,91,606
Grand Total	2,39,33,35,411	1,69,21,87,350	4,08,55,22,761	1,09,80,04,798	78,70,99,957	1,88,51,04,755
Input Tax Credit						
Service Tax	11,50,34,747	9,89,46,985	21,39,81,732	3,37,70,757	3,09,59,862	6,47,30,619
Total Credit Available	11,50,34,747	9,89,46,985	21,39,81,732	3,37,70,757	3,09,59,862	6,47,30,619

It was observed from the above submissions filed by the Respondent there were several other projects of the Respondent under the same GST registration number i.e. 29AAACZ3571A1ZF, the profiteering aspect of which was not verified. To keep the investigation rational and justifiable, it was required to investigate all the projects under one GST registration simultaneously.

3. The NAA after considering the various submissions made by the Applicant No. 1 and the DGAP, vide its Interim Order No. 12/2019 dated 15.10.2019, referred the matter back to the DGAP to reinvestigate the matter as per the provision of Rule 133(4) of CGST 2017.
4. Accordingly, the DGAP has carried out necessary re-investigation and on conclusion of the same, a report dated 30.09.2020 was sent to the NAA under Rule 133 (4) of the CGST Rules, 2017 which inter-alia stated that: -

- i. After receiving reference from the NAA, a letter was issued to the Respondent on 25.10.2019 calling upon him to submit the information/ documents required to further investigate the matter.
- ii. The NAA vide letter dated 29.09.2020 approved to revise the period covered by the current investigation from 01.07.2017 to 31.10.2019.
- iii. The time limit to complete the investigation was extended up to 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 where, "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."
- iv. In response to the DGAP letter dated 25.10.2019 and subsequent reminders, the Respondent had submitted his reply vide letters/e-mails dated 07.11.2019, 18.11.2019, 01.12.2019, 26.12.2019, 27.12.2019, 08.06.2020, 02.07.2020, 10.08.2020, 03.09.2020 and 25.09.2020. The reply of the Respondent has been summed up as is given below:-

- a) That he had following projects under the same GSTIN:

S. No.	Name of the Project / Phase	Type of the Project
1.	Nikoo Homes - I	Residential
2.	Nikoo Homes – II	Residential
3.	Leela Residences	Residential

and the NAA had already issued its Order No. 49/2019 dated 14.10.2019 in the case of Nikoo Homes-II.

- b) That he had incurred/received substantial part of material/services before issuance of OC. However, the vendor's invoicing pattern would spilt over a period of 1 year. Hence, the Respondent had received certain invoices (for materials/services procured before issuance of OC) even after issuance of OC.
- c) That he has following projects which are non-residential in nature and not for sale as on date for which he has not claimed any ITC on procurement of materials/services:
 - i. Leela Hotel & Convention Centre;
 - ii. Retail Mall & Cineplex;
 - iii. School Project.
- v. The Respondent has submitted the following documents vide aforementioned letters and e-mails:-
 - a. Copies of GSTR-1 Returns for the period Sept., 2018 to Oct., 2019.
 - b. Copies of GSTR-3B Returns for the period Sept., 2018 to Oct., 2019.
 - c. Copy of quarterly project report submitted to RERA upto Oct., 2019.
 - d. List of home buyers for the project "Nikoo Homes-I".
 - e. Input Tax Credit Register for the period 01.09.2018 to 31.10.2019.
 - f. Reconciliation of GST Input tax credit with Returns.
 - g. Details of ITC reversal on account of unsold units on receipts of Occupancy Certificates in the project "Nikoo Homes-I".
- vi. That total 10 wings in the impugned project which were completed and received 'OC' in phased manner as per Table-'A' given below:

Table-'A'

S.No.	Wings	No. of Units	Date of OC
1	G, H & I	837	20-03-2017
2	E and F	514	04-12-2017
3	C, D and J	508	23-04-2018
4	A and B	556	28-07-2018
Total		2,415	

Although the Respondent had received OCs in phased manner, but he had availed input tax credit post receipt of OCs also as the Respondent had received certain invoices (for materials/services procured before issuance of OCs) even after issuance of OCs. Further, the Respondent also did not maintain separate books of accounts for any wings for booking of specific purchase & expenses. Therefore, profiteering, if any, has to be computed by taking into account the total input tax credit availed by the Respondent and total turnover of complete project.

5. The Respondent's objection with respect to calling information/documents after expiry of 6 months as mentioned in Rule 133(1) was forwarded by DGAP to the NAA vide letter dated 19.11.2019 seeking guidance for further course of action in the instant case. In response, the NAA vide letter dated 02.12.2019 informed that all such submissions of the Respondent would be addressed by the NAA in its final order and the DGAP was directed to proceed with the investigation.
6. The DGAP has observed that prior to 01.07.2017, i.e. before the GST was introduced, the Respondent was eligible to avail CENVAT credit of Service Tax paid on Services and the credit of the VAT paid on the purchase of inputs and deduction of the payments made to the sub-contractors from the VAT turnover. However, CENVAT credit of the Central Excise Duty paid on inputs was not admissible as per the CENVAT Credit Rules, 2004, which was in force at the material time. Further, post-GST, the Respondent could avail the input tax credit of GST paid on all the inputs and input services including the sub-contracts. From the information submitted by the Respondent for the period from April, 2016 to

October, 2019, the details of the input tax credits availed by him, his turnovers from the project "Nikoo Homes - I" the ratios of input tax credits to turnovers, during the pre-GST (April, 2016 to June, 2017) and post-GST (July, 2017 to October, 2019) periods, were furnished as is given in Table-'B' below:-

Table-'B' (Amount in Rs.)

S. No.	Particulars	April, 2016 to June, 2017 (Pre-GST)	July, 2017 to August, 2018	Sept., 2018 to October, 2019	Total (Post-GST)
(1)	(2)	(3)	(4)	(5)	(6)=(4)+(5)
1	CENVAT of Service Tax Paid on Input Services (A)	15,29,59,685	-	-	-
2	Credit of VAT Paid on Purchase of Inputs (B)	6,48,43,094	-	-	-
3	Rebate of VAT(WCT) for the payment made to registered Contractors or Sub-contractors (C)	14,45,39,494	-	-	-
4	Input Tax Credit of GST Availed (D)	-	21,68,02,00	5,23,81,782	26,91,83,783
5	Input Tax Credit of GST reversed on receipt of OC (E)	-	55,62,072	27,88,885	83,50,957
6	Total CENVAT/VAT/Input Tax Credit Available before reversal (F) = [(A)+(B)+(C)] or [(D) + (E)]	36,23,42,273	22,23,64,073	5,51,70,667	27,75,34,740
7	Total Turnover including land value as per Home Buyers List (G)	3,48,86,05,998	1,47,64,89,092	46,65,93,569	1,94,30,82,661
8	Total Saleable Area (in sq. ft.) (H)	32,28,666			32,28,666
9	Area Sold relevant to Turnover as per List of Home buyers (I)	30,91,965			20,94,554
10	Relevant CENVAT/INPUT TAX CREDIT (J)= [(F)*(I)/(H)]	34,70,00,782			18,00,46,961
11	Ratio of CENVAT/ Input Tax Credit to Turnover [(K)=(J)/(G)]	9.95%			9.27%

From the Table- 'B', it is clear that the Input Tax Credit as a percentage of the turnover that was available to the Respondent during the pre-GST period (April, 2016 to June, 2017) was 9.95% whereas during the post-GST period (July, 2017 to October, 2019), the percentage was 9.27%. This showed that post-GST, the Respondent had not benefited from any additional ITC and in fact, the ITC availed by the Respondent post introduction of GST was lesser by 0.68% [9.27% (-) 9.95%] of the turnover as compared to the pre-GST period.

7. Further, it is also observed that the Central Government, on the recommendation of the GST Council, had levied 18% GST on Construction Service vide Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017. Accordingly, the allegation of profiteering has also been examined from the rate of tax angle, by comparing the applicable tax rates in the pre-GST and post-GST periods. In the pre-GST period (April, 2016 to June, 2017), Service Tax @ 6% and VAT@ 10.15% were payable

(total tax rate of 16.15% on the construction value) and in the post-GST period (July, 2017 to August, 2018), the GST rate was 18% on the construction value. Therefore, the applicable tax rate on Construction Service has, in fact, increased from 16.15% in the pre-GST period to 18% in the post-GST period.

8. The DGAP has concluded that in this case, the allegation was that post implementation of GST, the benefit of input tax credit was not passed on by the Respondent by way of commensurate reduction in the prices, to the recipients. However, as discussed above, there was no benefit of additional input tax credit that accrued to the Respondent post introduction of GST. In fact, the input tax credit as a ratio of Respondent's turnover decreased from 9.95% to 9.27%. Moreover, the effective rate of tax has also gone up from 16.15% to 18%, post introduction of GST. Section 171(1) of the Central Goods and Services Tax Act, 2017 dealing with profiteering can be invoked in the event when there was a reduction in the rate of tax or there is an increase in the input tax credit. Since neither of the conditions prescribed under the aforesaid Section 171(1) has been met, the said statutory provision is not applicable to the present case for the project "Nikoo Homes - I".
9. A copy of the investigation Report dated 30.09.2020 was provided to the Applicant No. 1 as per the Minutes of the Meeting of NAA held on 05.10.2020 vide letter dated 07.10.2020. A letter was also written to Secretary, Real Estate Regulatory Authority, Karnataka requesting him to intimate whether the Respondent had maintained separate bank accounts for his projects Nikko Homes -I, Nikko Homes-II and Leela Residences. Hearing in the matter was held on 29.04.2022 and the same was attended by Sh. Vivek Kumar, Applicant. During the personal hearing the Applicant No. 1 was heard. Further, the Applicant No. 1 also submitted his consolidated written submissions on 04.05.2022 where he re-iterated his earlier submission stating that the Respondent has charged Tax as GST @ 18% without giving any ITC.
10. One more opportunity of hearing on 14.09.2023 was provided to the Applicant No. 1 vide notice dated 21.08.2023 by the Commission, however, the Applicant No. 1 did not appear for the same and vide e-mail dated 17.08.2023 has informed that he would not be able to appear in person for hearing and requested to pass order on the basis of his earlier arguments.

11. This Commission has carefully considered the Reports of the DGAP, submissions made by the Applicant No. 1 and the case record. It is on record that Applicant No. 1 had filed a complaint alleging that the Respondent had not passed on the benefit of ITC to him by way of a commensurate reduction in the price of the flat purchased by him from the Respondent.
12. This Commission finds that as per Respondent's submissions the following three projects are under the same GSTIN:-
 - I. Nikko Homes –I
 - II. Nikko Homes –II
 - III. Leela Residences

It also finds that the NAA has already issued Order No. 49/2019 dated 14.10.2019 in case of Nikko Homes-II project and Order No. 70/2022 dated 07.09.2022 in case of Leela Residences projects of the Respondent. Further, in the case of Nikko Homes –I project it has been observed that Respondent had total 10 wings which included 2,415 units in the impugned project and the Respondent had not maintained separate books of accounts for any wing for booking of specific purchase and expenses, therefore profiteering, if any was to be computed by taking into account the total ITC availed by the Respondent.

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

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

It is clear from the plain reading of Section 171 (1) mentioned above that it deals with two situations, one relating to the passing on the benefit of reduction in the rate of tax and the second pertaining to the passing on the benefit of the ITC. On the issue of reduction in the tax rate, it is apparent from the DGAP's Report that there has been no reduction in the rate of tax in the post GST period. Hence, the only issue to be examined is as to whether there was any additional benefit of ITC with the introduction of GST. The Commission observes that, the ITC, as a percentage of the turnover, that was available to the Respondent during the pre-

GST period (April-2016 to June-2017) was 9.95%, whereas, during the post-GST period (July-2017 to October, 2019), it was 9.27%. Hence, the Respondent has availed lesser ITC to the extent of 0.68% [9.95% (-) 9.27%] of the turnover as compared to the pre-GST period. This confirms that in the post-GST period, the Respondent has not been benefited from additional ITC as percentage of the turnover that was available to the Respondent during post-GST is lower than during the pre-GST.

14. In the context of this case, we also refer to provisions of Section 4 (2) (l) (d) of the Real Estate (Regulation and Development) Act, 2016 which, inter- alia, provides as below:-

“that seventy percent. of the amounts realised for the real estate project from the allottees, from time to time, shall be deposited in a separate account to be maintained in a scheduled bank to cover the cost of construction and the land cost and shall be used only for that purpose:-

Provided that the promoter shall withdraw the amounts from the separate account, to cover the cost of the project, in proportion to the percentage of completion of the project: Provided further that the amounts from the separate account shall be withdrawn by the promoter after it is certified by an engineer, an architect and a chartered accountant in practice that the withdrawal is in proportion to the percentage of completion of the project.”

15. It is observed that the above provision of the RERA Act, 2016 makes it mandatory for a real estate developer/promoter to maintain separate bank accounts for each of his projects registered separately under the RERA Act, 2016. In view of this, Secretary of Real Estate Regulatory Authority, Karnataka vide letter dated 12.10.2020 and subsequent reminder dated 29.01.2021 and 24.02.2021 was requested to intimate whether the Respondent has maintained separate accounts for Nikko Homes –I , Nikko Homes-II and Leela Residences projects. In reply, vide the letter dated 04.03.2021 Karnataka RERA has informed that M/s. Bhartiya Urban Pvt. Ltd. has maintained separate Bank accounts for above projects. The above information was sought from the Karnataka RERA only to confirm whether the Respondent has kept separate accounts for each project or not.

16. In view of the above findings, we find that the instant case does not fall under the ambit of Anti-Profiteering provisions of Section 171 of the CGST Act, 2017. Accordingly, the proceedings initiated against the Respondent under Rule 133 (4) of the CGST Rules, 2017 are hereby dropped.
17. A copy of this order be supplied to all the parties free of cost and file of the case be consigned after completion.

S/d.
(Ravneet Kaur)
Chairperson

S/d.
(Sangeeta Verma)
Member

Certified Copy


(Jyoti Jindgar Bhanot)
Secretary, CCI

File No. 22011/NAA/207/BhartiyaUrban/2020 / 785-788 Date: 14.09.2023
Copy To:-

1. Mr. Vivek Kumar, S/o Rajendra Prashad, 126 Block -C, Anisha Grange Apartment, C V Raman Nagar, Bengaluru – 560093.
2. M/s Bhartiya Urban Pvt. Ltd. (Formerly Known as M/s. Bhartiya City Developers Pvt. Ltd.), No. 1/5, Palace Road, Bengaluru- 560001.
3. Directorate General of Anti-Profiteering, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, New Delhi-110001.
4. Guard File

o/c