

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

Case No. 60/2019
Date of Institution 23.05.2019
Date of Order 21.11.2019

In the matter of:

1. Shri. Abhishek, House No. 62, Ward No. 9, Behind Post Office, Julana, Jind, Haryana-126101.
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

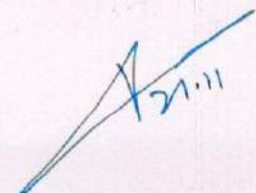
Versus

M/s Signature Global Developers Pvt. Ltd., 1308, 13th floor, Dr. Gopal Das Bhawan, 28 Barakhamba Road, Connaught Place, New Delhi-110001.

Respondent

Quorum:-

Sh. B. N. Sharma, Chairman
Sh. J. C. Chauhan, Technical Member
Ms. R. Bhagyadevi, Technical Member
Sh. Amand Shah, Technical Member



Present:-

1. None for the Applicant No. 1.
2. None for the Applicant No. 2.
3. None for the Respondent.


ORDER

1. The present Report dated 21.05.2019 and the subsequent Report dated 12.07.2019 have been received from the Applicant No. 2 i.e. the Director General of Anti-Profitteering (DGAP) after detailed investigation under Rule 129 (6) of the Central Goods & Service Tax (CGST) Rules, 2017. The brief facts of the case are that the Applicant No. 1 had filed an application dated 29.09.2018 before the Standing Committee on Anti-profitteering, under Rule 128 of the Central Goods and Services Tax Rules, 2017 and submitted that he had purchase a flat in the Respondent's project "Synera", situated at Sector-81, Gurugram, Haryana and alleged that the Respondent had not passed on the benefit of Input Tax Credit (ITC) to him by way of commensurate reduction in price, in terms of Section 171 of the Central Goods and Services Tax Act, 2017 and had charged GST on the pre-GST base price of Rs. 4000 per sq. ft.
2. The above application was examined by the Standing Committee on Anti-profitteering and vide minutes of its meeting dated 13.12.2018 it was forwarded to the DGAP for detailed investigation.
3. The DGAP on receipt of the application issued notice dated 16.01.2019 to the Respondent to reply as to whether he admitted that the benefit of ITC had not been passed on to the Applicant No. 1 by

way of commensurate reduction in price and if so, to suo moto determine the quantum thereof and indicate the same in his reply to the notice as well as furnish all the supporting documents. The DGAP vide his letter dated 16.01.2019, had given an opportunity to the Respondent to inspect the non-confidential evidences/information submitted by the above Applicant. However, the Respondent did not avail of the said opportunity. The DGAP, vide email dated 06.05.2019, had also given the Applicant No. 1 an opportunity to inspect the non-confidential evidences/information submitted by the above Respondent. However, the Applicant No. 1 did not avail of this opportunity.

4. The DGAP had sought extension of time for completing the investigation which was extended by this Authority vide its order dated 19.03.2019 in terms of Rule 129 (6) of the CGST Rules, 2017. The period of the investigation is from 01.07.2017 to 31.12.2018.
5. In response to the Notice dated 16.01.2019 issued by the DGAP, the Respondent vide his replies dated 06.02.2019, 21.02.2019, 18.03.2019, 10.04.2019, 01.05.2019 and 14.05.2019 has submitted that the Respondent was a single housing project construction company and was developing the present project at Sector-81, Gurugram under the Affordable Housing Scheme, under the Pradhan Mantri Awas Yojna. He has also submitted that he was not directly engaged in any construction activity and all the work related to the project was assigned to various sub-contractors, who procured all the required raw materials on their own except Steel, Cement and RMC which were supplied by the Respondent on free of charge basis.

However, the project was executed under the supervision of the staff employed by the Respondent. He has further submitted that in the pre-GST regime, "under-construction properties" were covered by the definition of works contract and attracted Haryana VAT @ 4.5% (approximately) with full ITC of VAT paid on goods involved in the execution of works contract. Affordable housing was, however, exempt from Service Tax, vide Notification No. 9/2016-ST dated 01.03.2016. He further contended that in the GST regime, construction of low cost houses upto a carpet area of 60 square meters per house in a housing project approved by any State Government, was taxable @ 12% (effectively @ 8% after 1/3rd abatement for the value of land), vide Notification No. 01/2018-Central Tax (Rate) dated 25.01.2018 and earlier the GST rate on affordable housing was 18% and the effective rate was 12% after 1/3rd abatement for the value of land. Thus, the total indirect tax burden on the project has increased by 3.5% after the introduction of GST. The Respondent has also clarified that under the erstwhile VAT/Service Tax regime, the Respondent was allowed ITC of all VAT/WCT paid to the vendors/Sub-contractors. The affordable housing sale price of Rs. 4,000/- per sq. ft. was fixed after considering the benefit of ITC of VAT/WCT. However, the Central taxes, i.e., the Central Excise Duty and Service Tax levied on the goods & services used in the execution of works contract were part of the cost of the project. Now, under the GST regime, the benefit of erstwhile Central Excise Duty/Service Tax was available to the Respondent and the same was required to be passed on to the recipients.



6. The Respondent has also admitted that Section 171 of the CGST Act, 2017 provided that it was mandatory to pass benefit due to reduction in the rate of tax or the ITC, to the consumers, by way of commensurate reduction in prices and the applicability of this statute would have arisen in the following two situations:

- a) If there was reduction of rate of tax on the supply of goods or services
- b) If additional benefit of input tax credit was available.

He has also stated that on perusal of the facts of the present case, it could be summarised that in the GST regime, there was no reduction in the rate of tax on supply of goods and services as compared to the pre-GST regime, instead, there was an increase in the rate of GST by approximately 3.5%.

7. The Respondent has further stated that the Central taxes, i.e., Central Excise Duty/Service Tax levied under the pre-GST regime, on the transfer of property in goods in the execution of works contract, were now available as ITC in the GST regime. The Respondent was only procuring Cement, Steel and RMC on his own and all construction work was sub-contracted to the various contractors, who procured raw materials directly, after due payment of Central Excise Duty/GST. He has further stated that in order to comply with the provisions of Section 171 of the CGST Act, 2017, the Respondent had himself calculated the additional benefit of ITC provisionally and the same had already been credited to the buyers.

8. The Respondent had also raised three objections before the DGAP with the request to dispose of the same by passing a speaking order before proceeding under Section 171 of the Central Goods and Services Tax Act, 2017, in view of the methodology explained by the Supreme Court in the case of **M/s. GKN Driveshafts (India) Ltd. [2002] 1 SCC 72**. These objections are mentioned below:

(i) Whether on the facts & circumstances of the case, there was any reduction of rate of tax on the supply of goods and services involved in the execution of works contract in the current GST regime.

(ii) Whether on the facts & circumstances of the case, the benefit already credited/passed on to the buyers before initiation of proceeding, would have not been treated as compliance with the provisions of Section 171 of the CGST Act, 2017.

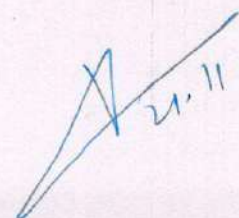
(iii) Whether on the facts and circumstances of the case, the Applicant No. 1 had misled this investigation by not providing complete facts about the receipt of benefit of ITC, in terms of Section 171 of the CGST Act, 2017.

9. The DGAP in his Report has also stated that the Respondent has furnished the following documents:-

(a) Copies of GSTR-1 Returns for the period July, 2017 to December, 2018.

(b) Copies of GSTR-3B Returns for the period July, 2017 to December, 2018.

(c) Copy of Tran-1 Return for transitional credit.



- (d) Copies of VAT & ST-3 Returns for the period April, 2016 to June, 2017.
- (e) Copies of all demand letters and sale agreement/contract issued in the name of the Applicant.
- (f) Details of applicable tax rates, pre-GST and post-GST.
- (g) Copies of Balance Sheets (including all annexures and profit & loss account) for FY 2016-17& 2017-18.
- (h) Copy of Electronic Credit Ledger for the period 01.07.2017 to 31.12.2018.
- (i) CENVAT Credit/Input Tax Credit register for the period April, 2016 to December, 2018.
- (j) Details of turnover, output tax liability, GST payable and input tax credit availed.
- (k) List of home buyers and commercial shop buyers in the project "Synera", along with the details of benefit passed on to them.
- (l) Reconciliation of turnover reported in the GSTR-3B Returns with that in the list of home buyers.
- (m) Copies of sample ledger showing benefit passed on.

The Respondent had also requested to treat all the data/information furnished by him as confidential, in terms of Rule 130 of the CGST Rules, 2017.

10. Based on the above mentioned documents filed by the Respondent, the DGAP has submitted that the main issue for determination was whether there was any benefit of reduction in the rate of tax or ITC on the supply of construction service by the

Respondent after implementation of the GST w.e.f. 01.07.2017 and if so, whether such benefit was passed on to the Applicant No. 1, in terms of Section 171 of the CGST Act, 2017.

11. The DGAP has also submitted that the Respondent, vide his letter dated 21.02.2019, submitted a copy of apartment buyer agreement dated 31.03.2015, demand letters and payment receipts for the sale of flat no. 12036 to the above Applicant, measuring 539 square feet, at the basic sale price of Rs. 4,000/- per square feet and 94 square feet balcony area at the basic sale price of Rs. 500/- per square feet. The DGAP has furnished the details of amounts and GST paid by the Applicant No. 1 to the Respondent in the Table below:-

Table-A (Amount in Rs.)

S. No.	Payment Stage	Due Date	Basic %	BSP	Service Tax	VAT	GST	Total
1	At the time of Application	24.01.2015	5%	1,10,150	3,404	4,957	-	1,18,511
2	At the time of Allotment	11.05.2015	20%	4,40,600	13,615	19,827	-	4,74,042
3	Within 6 months from the date of Allotment	11.11.2015	12.50%	2,75,375	9,639	12,392	-	2,97,406
4	Within 12 months from the date of Allotment	11.05.2016	12.50%	2,75,375	-	12,392	-	2,87,767
5	Within 18 months from the date of Allotment	11.11.2016	12.50%	2,75,375	-	12,392	-	2,87,767
6	Within 24 months from the date of Allotment	11.05.2017	12.50%	2,75,375	-	12,392	-	2,87,767
7	Within 30 months from the date of Allotment	11.11.2017	12.50%	2,75,375	-	-	33,045	3,08,420
8	Within 36 months from the date of Allotment	11.05.2018	12.50%	2,75,375	-	-	22,030	2,97,405
Total			100.00%	22,03,000	26,658	74,352	55,075	23,59,085

12. The DGAP has further submitted that the Respondent had claimed that the benefit already credited/passed on to the buyers before initiation of proceedings, should be treated as compliance with the provisions of Section 171 of the Central Goods and Services Tax Act, 2017 and from the copy of the ledger, furnished by Respondent as a part of his letter dated 14.05.2019, the DGAP has observed that he had passed on benefit amounting to Rs. 19,500/- (including 8% GST on the base amount of Rs. 18,056/-) to the Applicant No. 1 on 01.11.2018 which worked out to Rs. 33.50 per sq. ft. of the carpet area. But the correctness of the amount of benefit so passed on by the Respondent had to be determined in terms of Rule 129 (6) of the CGST Rules, 2017. Thus, the ITC available to the Respondent and the taxable amount received by him from the Applicant No. 1 and other recipients post implementation of GST had to be taken into account for determining the benefit of ITC that was required to be passed on by the Respondent to his recipients, the DGAP has stated.

13. The DGAP has further stated that the Respondent also contended that the Applicant No. 1 had misled the investigation by not disclosing the fact of getting benefit of the ITC, in terms of Section 171 of the CGST Act, 2017. The DGAP, upon examination has found that the Applicant No. 1 had filed the application on 29.09.2018 which was prior to the date of receipt of benefit from the Respondent on 01.11.2018.

14. The DGAP has also argued that para 5 of Schedule-III of the CGST Act, 2017 (Activities or Transactions which shall be treated neither as a supply of goods nor a supply of services) read 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 read 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, he has pleaded that the ITC pertaining to the residential units which were under construction but not sold was provisional ITC which may be required to be reversed by the Respondent, if such units remained unsold at the time of issue of the completion certificate, in terms of Section 17 (2) & Section 17 (3) of the CGST Act, 2017, which 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”.

15. Thus the DGAP has claimed that the ITC pertaining to the unsold units may not fall within the ambit of the current investigation and the Respondent would be required to recalibrate the selling price of such units to be sold to the prospective buyers by considering the net benefit of additional ITC available to them post-GST.
16. The DGAP has also observed that prior to 01.07.2017, i.e., before the GST was introduced, as the service of construction of affordable housing provided by the Respondent, was exempted from Service Tax, vide Notification No. 25/2012-ST dated 20.06.2012, as amended by Notification No. 9/2016-ST dated 01.03.2016, the Respondent was not eligible to avail CENVAT credit of Central Excise Duty paid on inputs or Service Tax paid on the input services, as per the CENVAT Credit Rules, 2004, which were in force at the material time. However, the Respondent was eligible to avail credit of Service Tax paid on the input services however, CENVAT credit of Central Excise Duty was not available, for the commercial shops sold by him. The DGAP has further observed that the Respondent was also eligible to avail ITC of VAT paid on the inputs and claim deduction from the taxable turnover under the VAT (WCT), of the payments made to the registered contractors or sub-contractors for the execution of the project. Further, post-GST, the Respondent could avail ITC of GST paid on inputs and input services including the sub-contracts. From the information submitted by the Respondent for the period from April,

2016 to December, 2018, the DGAP has furnished the details of the ITC availed by the Respondent, his turnover from the present project and the ratio of ITC to turnover, during the pre-GST period from April, 2016 to June, 2017 and post-GST period from July, 2017 to December, 2018 in the Table given below:-

Table-'B'

(Amount in Rs.)

S. No.	Particulars	April, 2016 to March, 2017	April, 2017 to June, 2017	Total (Pre-GST)	01.07.2017 to 24.01.2018 (GST @ 12%)	25.01.2018 to 31.12.2018 (GST @ 8%)	Total (Post-GST)
(1)	(2)	(3)	(4)	(5) = (3)+(4)	(6)	(7)	(8) = (6)+(7)
1	Credit of Service Tax Paid on Input Services used for Commercial Shops (A)	18,21,303	51,282	18,72,585	-	-	-
2	Input Tax Credit of VAT Paid on Purchase of Inputs (B)	75,22,122	16,52,588	91,74,710	-	-	-
3	Rebate of VAT (WCT) Paid to sub-contractors (C)	1,09,93,323	32,44,841	1,42,38,164	-	-	-
4	Total CENVAT/Input Tax Credit Available (D)= (A+B+C)	2,03,36,748	49,48,711	2,52,85,459	-	-	-
5	Input Tax Credit of GST Availed (net of reversal) (E)	-	-	-	1,47,03,334	3,11,88,714	3,33,92,048
6	Turnover from Commercial Shops as per ST-3 return (F)	3,50,02,644	87,96,013	4,37,98,657	-	2,99,96,846	-
7	Turnover from residential flats as per VAT Returns (G)	46,33,06,215	8,32,87,482	54,65,93,698	-	26,05,47,250	-
8	Total Turnover (H)	49,83,08,859	9,20,83,495	59,03,92,355	20,47,44,586	29,05,44,096	49,52,88,682
9	Total Saleable Carpet Area (Excluding Balcony Area) (in SQF) (I)	3,93,416(Residential)	20,950 (Commercial)	4,14,366	3,93,416 (Residential)	20,950 (Commercial)	4,14,366
10	Total Sold Carpet Area (Excluding Balcony Area) (in SQF) relevant to turnover (J)	3,76,933 (Residential)	9,603 (Commercial)	3,86,536	3,93,416 (Residential)	12,931 (Commercial)	4,06,347
11	Relevant ITC [(K)= (D)*(J)/(I)] or [(K)= (E)*(J)/(I)]			2,35,87,216			3,27,45,830
	Ratio of Input Tax Credit to Turnover [(L)=(K)/(H)*100]			4.00%			6.61%

17. Thus, the DGAP has claimed that from the above Table, it was clear that the ITC as a percentage of the turnover that was available to the Respondent during the pre-GST period from April, 2016 to June, 2017 was 4.00% and during the post-GST period from July, 2017 to December, 2018, it was 6.61% which confirmed that post-GST, the

Respondent had benefited from additional ITC to the tune of 2.61% [6.61% (-) 4.00%] of the turnover.

18. The DGAP has further observed that the Central Government, on the recommendation of the GST Council, had levied 18% GST (effective rate was 12% in view of 1/3rd abatement on value) on construction service, vide Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017. The effective GST rate on construction service in respect of affordable and low-cost houses upto a carpet area of 60 square metres per house was further reduced from 12% to 8%, vide Notification No. 1/2018-Central Tax (Rate) dated 25.01.2018. In view of the change in the GST rate after 01.07.2017, the DGAP has examined the issue of profiteering in two parts, i.e., by comparing the applicable tax rate and ITC available in the pre-GST period from April, 2016 to June, 2017 when only VAT@ 4.50% was payable with (1) the post-GST period from 01.07.2017 to 24.01.2018, when the effective GST rate was 12% and (2) with the GST period from 25.01.2018 to 31.12.2018, when the effective GST rate was 8% and accordingly, on the basis of the figures contained in Table-B above, the comparative figures of the ratio of ITC availed/available to the turnover in the pre-GST and the post-GST periods as well as the turnover, the recalibrated base price and the excess realization (Profiteering) during the post-GST period, have been tabulated by the DGAP in Table-'C' below:-



Table-'C'

(Amount in Rs.)

S. No.	Particulars	Post- GST Period				
		01.07.2017 to 24.01.2018 (Flats & Shops)	25.01.2018 to 31.12.2018 (Shops)	25.01.2018 to 31.12.2018 (Flats)	Total	
1	Period	A				
2	Output GST rate (%)	B	12	12	8	
3	Ratio of CENVAT credit/ Input Tax Credit to Total Turnover as per table - 'B' above (%)	C	6.61	6.61	6.61	6.61
4	Increase in input tax credit availed post-GST (%)	D= 6.61% less 4.00%	2.61	2.61	2.61	2.61
5	Analysis of Increase in input tax credit:					
6	Base Price raised during July, 2017 to December, 2018 (Rs.)	E	20,47,44,586	2,99,96,846	26,05,47,250	49,52,88,682
7	GST raised over Base Price @12% or 8% (Rs.)	F= E*B	2,45,69,350	35,99,622	2,08,43,780	4,90,12,752
8	Total Demand raised	G=E+F	22,93,13,936	3,35,96,468	28,13,91,030	54,43,01,434
9	Recalibrated Base Price	H= E*(1-D) or 97.39% of E	19,94,00,752	2,92,13,928	25,37,46,967	48,23,61,647
10	GST @12% or 8%	I = H* B	2,39,28,090	35,05,671	2,02,99,757	4,77,33,519
11	Commensurate demand price	J = H+I	22,33,28,843	3,27,19,600	27,40,46,724	53,00,95,166
12	Excess Collection of Demand or Profiteering Amount	K= G-J	59,85,094	8,76,868	73,44,306	1,42,06,267

19. The DGAP has also clarified that the additional ITC of 2.61% of the turnover should have resulted in the commensurate reduction in the base price as well as cum-tax price. Therefore, in terms of Section 171 of the Central Goods and Services Tax Act, 2017, the benefit of such additional ITC was required to be passed on to the recipients.

20. The DGAP has also submitted that on the basis of the aforesaid CENVAT/ITC availability in the pre and the post-GST periods and the details of the amount collected by the Respondent from the Applicant No. 1 and other home buyers during the period from 01.07.2017 to 24.01.2018, the amount of benefit of ITC that needed to be passed on by the Respondent to the recipients, came to Rs. 59,85,094/- for the residential flats and the commercial shops, which included 12% GST on the base profiteered amount of Rs. 53,43,834/-. The DGAP has also mentioned that the amount of benefit of ITC that needed to be passed on by the Respondent to the recipients during the period from 25.01.2018 to 31.12.2018, came to Rs. 82,21,174/- which included 12% GST on commercial shops and 8% GST on residential flats, on the base profiteered amount of Rs. 75,83,201/-. Therefore, the total benefit of ITC to be passed on during the period from 01.07.2017 to 31.12.2018, came to Rs. 1,42,06,267/- which included GST (@ 12% or 8%) on the base profiteered amount of Rs. 1,29,27,035/-. The DGAP has also furnished the home buyer and unit no. wise break-up of the above mentioned amount. The DGAP has also clarified that this amount was inclusive of Rs. 15,812/- (including GST on the base amount of Rs. 14,375/-) which was the benefit of ITC required to be passed on to the Applicant No. 1.

21. The DGAP has also observed that the Respondent had supplied the service in the State of Haryana only.

22. The DGAP has also stated that the Respondent had submitted that he had passed on the benefit of Rs. 1,47,68,865/- to the home buyers and the summary of category-wise ITC benefit required to be

passed on and the benefit claimed to have been passed on, has been furnished by him as per Table-'D' below:-

Table-'D'

(Amount in Rs.)

S. No.	Category of Customers	No. of Units	Area (in Sq. ft.)	Amount Received Post GST	Benefit to be passed on as per Annex-13	Benefit claimed to have been Passed on by the Respondent	(Excess)/ Shortage of Benefit profiteering)	Remark
A	B	C	D	E	F	G	H=F-G	I
1	Applicant (Residential)	1	539	5,50,750	15,812	19,500	(3,688)	Excess Benefit Passed on as per Annex-14
2	Other Buyers (Residential)	784	3,76,394	38,53,69,750	1,10,63,966	1,36,17,935	(25,53,969)	Excess Benefit passed on. List Attached as Annex-14
3	Other Buyers (Residential)	35	16,483	6,75,87,000	19,05,142	5,96,355	13,08,787	Further Benefit to be passed on as per Annex-15
	Total Residential (A)	820	3,93,416	45,35,07,500	1,29,84,920	1,42,33,790		
4	Commercial Shop Buyers	50	11,279	4,00,98,082	11,72,147	4,23,178	7,48,969	Further Benefit to be passed on as per Annex-16
5	Commercial Shop Buyers	8	1,652	16,83,100	49,200	61,987	(12,787)	Excess Benefit passed on. List Attached as Annex-17
6	Commercial Shop Buyers	6	1,330	-	-	49,910	(49,910)	No Consideration paid Post-GST, However, Respondent passed on benefit. List Attached as Annex-17
7	Commercial Shop Buyers	16	6,689	-	-	-	-	Unsold Units as on 31.12.2018
	Total Commercial (B)	80	20,950	4,17,81,182	12,21,347	5,35,075		
	Grand Total (C)=(A)+(B)	900	4,14,366	49,52,88,682	1,42,06,267	1,47,68,865		

23. The DGAP has also contended that the benefit claimed to have been passed on by the Respondent to the recipients was less than what they ought to have been passed on in case of 35 residential flats by an amount of Rs. 13,08,787/- and by Rs. 7,48,969/-, in case of 50 commercial shops. Further, benefit claimed to have been passed on

by the Respondent was higher than what he should have passed on, in respect of 785 residential flats including the Applicant No. 1 by an amount of Rs. 25,57,657/- and by Rs. 62,697/-, in case of 14 commercial shops. However, the DGAP has contended that this excess benefit claimed to have been passed on to some recipients, could not be set off against the additional benefit required to be passed on to the other recipients and it could only be adjusted against any future benefit that might accrue to such recipients.

24. The DGAP has also submitted that the benefit of additional ITC to the tune of 2.61% of the turnover has accrued to the Respondent post-GST and the same was required to be passed on by the Respondent to the Applicant No. 1 and the other recipients. Thus, the Respondent has contravened the provisions of Section 171 of the CGST Act, 2017, in as much as the additional benefit of ITC @2.61% of the base price received by the Respondent during the period from 01.07.2017 to 31.12.2018, has not been passed on by the Respondent to 85 recipients (35 buyers of residential flats plus 50 buyers of commercial shops). The DGAP has also mentioned that although the Respondent has claimed to have passed on an excess amount of Rs. 3,688/- to the Applicant No. 1, his investigation has revealed that the Respondent had realized an additional amount of Rs. 20,57,756/-, from 85 other recipients (35 home buyers and 50 shop buyers) who were not Applicants in the present proceedings. Those recipients were identifiable as per the documents provided by the Respondent, which gave the names and addresses along with Unit

No. allotted to such recipients. Therefore, this additional amount of Rs. 20,57,756/- was required to be returned to such eligible recipients.

25. The DGAP has also stated that since the present investigation covered the period from 01.07.2017 to 31.12.2018, thus, profiteering, if any, for the period post December, 2018, had not been examined by him as the exact quantum of ITC that would be available to the Respondent in future could not be determined at the present stage, when the construction of the project was yet to be completed.
26. The above Report was considered by the Authority in its meeting held on 28.05.2019 and it was decided to issue notice dated 28.05.2019 to the Respondent to explain why the Report dated 21.05.2019 furnished by the DGAP should not be accepted and his liability for violation of the provisions of Section 171 of the CGST Act, 2017 should not be fixed. He was also asked to file reply why penalty as per Section 29, 122-127 of the above Act read with Rule 21 and 133 of the CGST Rules, 2017 should not be imposed on him. It was also decided to hear the Applicants and the Respondent on 13.06.2019, however, neither the Applicants nor the Respondent have attended the hearings held on 13.06.2019, 01.07.2019 and 11.07.2019 accorded to them.
27. The Respondent has filed his written submissions on 01.07.2019 vide which he has submitted that the DGAP's Report dated 21.05.2019 had made incorrect finding that he had benefited from additional ITC of 2.61% of the turnover and the above finding was based on the average method applied by the DGAP on his own accord. He has also submitted that he had not been given any

opportunity by the DGAP to either controvert or respond to the DGAP's adoption of the average basis for determining the alleged profiteering. He has further submitted that this Authority had not provided any basis, method and reasoning for computing any alleged profiteering in violation of the provisions of Section 171 of the CGST Act, 2016 under Rule 126 of the above Rules.

28. He has also argued that it was settled that in the taxing statutes, mechanism for computation of value should be provided on which tax was to be paid and it had been held by several Courts including the Apex Court that in the absence of any computational machinery the charging provisions would be construed to have never included the transaction within its fold and no tax could be levied on such transactions. He has also cited the judgements recorded in the cases of ***B. C. Srinivasa Setty (1981) 128 ITR 294 (SC)***, ***Palai Central Bank Ltd. (1984) 150 ITR 539 (SC)*** and ***National Mineral Development Corporation (2004) 65 SCC 281*** in his support. He has also contended that the Hon'ble Patna High Court has held in the case of ***Larsen & Toubro v. State of Bihar 2004 (134) STC 354 (Pat.)*** which was affirmed by the Hon'ble Supreme Court in the case of ***Voltas Ltd. (2007) 7 VST 317 (SC)*** that in the absence of all exclusions which were to be prescribed for computation of tax, no tax was payable. He has further contended that in the recent case of ***Larsen & Toubro 2015 SCC Online SC 738***, supra, the Hon'ble Supreme Court has also quoted with approval the judgements of the Hon'ble Patna, Madras and Orissa High Court relating to the machinery provisions in the following terms:-

"We find that the Patna, Madras and Orissa High Courts have, in fact, either struck down machinery provisions or held machinery provisions to bring indivisible works contracts into the service tax net, as inadequate."

The above judgment has also been quoted in the judgment of the Hon'ble Supreme Court passed in the case of **State of Jharkhand v. Voltas Ltd. East Singhbhum (2007) 9 SCC 266.**

29. The Respondent has also claimed that the Anti-Profiteering provision under the CGST Act and the Procedure & Methodology drafted under Rule 126 was silent on the timing of passing on of the benefit which has accrued on the basis of the agreement entered during the pre-GST regime and transfer of property in goods/services in the GST regime, and passing on of the same to the buyers especially in case of unfinished projects. He has also mentioned that in conventional sale of goods/services, the property in goods/services got transferred as intended by the parties, and after transferring risk and reward of the goods/services, the recipient became the owner after paying due consideration along-with taxes thereon. He has further mentioned that in a conventional case, the provision of anti-profiteering came into effect from the time, the recipient received the goods/services. He has also submitted that in the present case, he was engaged in the development of Affordable Group Housing residential flats and his project has commenced on 08.05.2015 with

expected completion on 31.12.2019. He has further submitted that he transaction entered with the buyers was covered under the definition of works contract involving undivided share of land, transfer of property in goods and services and thus, it was a composite works contract. The Respondent has also claimed that during the period covered by the arbitrary calculation of profiteering by the average method from 01.07.2017 to 31.12.2018, the project was under construction with expected date of completion being approximately one year later and hence calculation of profiteering in his project which was still under construction was biased. He has further claimed that the profiteering, if any, could only be determined once the project was nearing completion.

30. The Respondent has also contended that the average method adopted by the DGAP for computation of profiteering suffered from the following errors:-

- i. Certain inputs in construction including bricks, stones and dust stone aggregate etc. were exempted from VAT in the pre GST period. In post GST period, such inputs suffer GST @ 5%. Therefore, while computing the input GST, the amount of GST on such tax free items had also been considered by the DGAP which was to the detriment of the Respondent and in fact, the GST on such items which earlier were tax free had to be eliminated while computing possible profiteering.
- ii. Even while adopting average basis for alleging profiteering, the DGAP had erred in not doing a likewise comparison adopting similar set of circumstances in pre and post GST

period. Profiteering could be freely determined in the case of a tangible product while comparing the pricing and tax input benefit in the pre and post GST regime and thus, adopting an ad hoc average basis for determining profiteering on a product which was yet to be completed was both arbitrary and premature and was biased.

31. The Respondent has also claimed that the DGAP in his Report dated 21.05.2019 has stated that the total benefit to be passed on by him was Rs. 1,42,06,267/- and the DGAP has admitted that the benefit passed on by the Respondent was Rs. 1,47,68,865/-. details of which have been computed as per Annexure 14 & 15 of the Report. Thus, during the interim period, the Respondent has passed on excess benefit under the provisions of section 171 of the CGST Act, 2017 of Rs. 5,62,598/- including Rs. 3,688/- to the above Applicant. He has further submitted that in compliance with the provisions of section 171 of the CGST Act, read with the Rules he had determined on ad hoc basis the following estimated benefit of ITC to be passed on to the flat owners:-

- Residential flat owners, the benefit of input credit in comparison with the pre-GST era was determined on adhoc basis @ Rs. 36.18 per sq. ft.
- For commercial shop buyers the benefit of input credit was determined on adhoc basis @ Rs. 37.52 per sq. ft.

He has also stated that as it was an adhoc calculation it was done across the board irrespective of the amounts received from the flat / shop owners in the pre and post GST period. Consequent to the ad hoc calculation the Applicant No. 1 had received an excess benefit of Rs. 3,688/- as per the finding given in Table D of the DGAP's Report dated 21.05.2019.

32. He has further claimed that the following issues had not been addressed in the above mentioned Report:-

- i. Does the allegation of Anti Profiteering by the Applicant No. 1 existed after it had been determined that he had already availed excess benefit of Rs. 3,688/-.
- ii. Does the continuation of the proceedings under the Anti-Profitteering provisions subsists when it had been accepted that the Applicant No. 1 had been passed on excess benefit.
- iii. Once the allegation of the Applicant No. 1 of profiteering by the Respondent had been established to be incorrect, could the proceedings against the Respondent continue suo-moto. Paragraph 9 read with paragraph 12, 13 and 14 of the "Procedure & Methodology" did not mention circumstances for continuing with the proceeding on own motion once it had been observed that there had been no undue profiteering in the case of the Applicant No. 1.

iv. Continuing with the proceedings in the absence of finding of profiteering causes grave injustice to the Respondent and defeats the intent under which the provisions of Section 171 and the applicable Rules have been framed.

33. The Respondent has also submitted that the excess payments made to the 799 flat owners aggregated to Rs. 26,20,354/- and hence, in case of only 85 flat owners, it could not be stated that Rs. 20,57,756/- had been short paid as per the arbitrary calculation made by the DGAP on average basis. He has further submitted that instead of directing him to recover the excess payments from 799 flat owners and pass it on to the 85 flat owners who were alleged to be short paid, the DGAP and the Authority had issued an aggressively worded notice threatening dire consequences. He has also stated that he proposed to initiate appropriate measures of raising debit and credit notes on the respective flat owners to ensure parity and passing on of the profiteering amount as determined.

34. The Respondent has also contended that Rule 129 (6) of the CGST Rules, 2017 only provided a time frame of 3 months for concluding an enquiry and submitting Report along with records. It did not provide for profiteering to be determined at any point during the process of any product / service which was under completion and if so, profiteering will have to be determined in respect of all work in progress.

35. The Respondent has further requested that his above submissions be taken on record for concluding the case without

granting any further hearing to him and in case any documents / clarifications were required, the same be conveyed for being submitted to the Authority.

36. The DGAP was also asked to submit his report on the issues raised by the Respondent vide his above mentioned submissions. The DGAP vide his Report dated 12.07.2019 has submitted regarding the Respondent's submissions that profiteering can only be determined once the project was nearing completion and all costs, inputs, claims and contingencies have to be taken into account, may require deliberation by applying relevant provisions of the law including Rule 129 (6) of the CGST Rules, 2017. He has also submitted that the excess benefit claimed to have been passed on by the Respondent to some recipients, could not be set off against the additional benefit that was required to be passed on to some other recipients. The DGAP has further submitted that he has mentioned in his report dated 21.05.2019 that the Respondent had passed on an excess amount of Rs. 3,688/- to the Applicant No. 1, however, his investigation has revealed that the Respondent has realized an additional amount of Rs. 20,57,756/- from 85 other recipients (35 home buyers and 50 shop buyers) who were not Applicants in the present proceedings. Therefore, contravention of Section 171 of the CGST Act, 2017 was in respect of those 85 other recipients. He has also stated that all other facts/ queries raised by the Respondent had been explained in his report dated 21.05.2019.



37. We have carefully considered all the Reports filed by the DGAP, submissions of the Respondent and other material placed on record and it is revealed that the Respondent is executing his "Synera" project under the Affordable Housing Scheme approved by the Government of Haryana under the Prime Minister Awas Yojana and is constructing both the residential and commercial accommodation. It is also revealed that the Applicant No. 1 had complained to the Standing Committee on 29.09.2018 that the above Respondent was not passing on benefit of ITC to him on the flat which he has purchased from him and was also charging GST from him on the pre-GST base price of Rs. 4,000/- per sq. ft. The above complaint was examined by the Standing Committee in its meeting held on 13.12.2018 and was forwarded to the DGAP for detailed investigation as per the provisions of Rule 129 (1) of the CGST Rules, 2017. The DGAP has conducted investigation in the above allegations levelled by the Applicant and vide his Report dated 21.05.2019 has stated that the Respondent had violated the provisions of Section 171 of the above Act by resorting to profiteering of an amount of Rs. 1,42,06,267/-.

38. The Respondent in his written submissions filed on 01.07.2019 has claimed that the DGAP's Report dated 21.05.2019 had recorded incorrect finding by stating that he had benefited from additional ITC of 2.61% of the turnover, as this finding was based on the average method applied by the DGAP on his own accord. However, perusal of Table B of the above Report shows that the ratio of CENVAT and VAT for the period between April, 2016 to June, 2017 has been calculated on the basis of the figures reflected by the Respondent in his Service

Tax and the VAT Returns filed during the above period. Similarly, the computation of ratio of ITC to turnover for the period from July, 2017 to December, 2019 is based on his post-GST Returns. The figures of turnover for both the above periods have also been taken from his Returns. The Respondent had himself supplied the details of the total saleable carpet area and the total sold area relevant to the turnover for both the above periods. Hence, both the above ratios are based on actual mathematical computations and not on averages as has been claimed by the Respondent and hence, the above claim of the Respondent is incorrect.

39. He has further claimed that he had not been given opportunity by the DGAP to either controvert or respond to the DGAP's adoption of the average basis for determining the alleged profiteering. In this connection it would be appropriate to mention that as per the provisions of Rule 129 (1) of the CGST Rules, 2017 the DGAP has been entrusted with the responsibility of carrying out detailed investigation in the allegations of profiteering and collect necessary evidence and therefore, he is not required to afford opportunity of hearing to the Respondent being an investigating agency. As per the provisions of Rule 129 (3) the DGAP is required to give notice to the Respondent which he has given on 16.01.2019 and hence he has complied with the above provision. Proper opportunity of being heard has been provided to the Respondent by this Authority in which the Respondent had controverted the computations of the DGAP through his written submissions and hence he should have no objection on this ground. However, he has not cared to attend any of the personal

hearings which were afforded to him by this Authority on 13.06.2019, 01.07.2019 and 11.07.2019.

40. The Respondent has also contended that this Authority has not provided any basis, method and reasoning for computing profiteering in respect of violation of the provisions of Section 171 of the CGST Act, 2016 under Rule 126 of the above Rules. In this connection it is mentioned that this Authority has already determined the Methodology and Procedure under the powers vested in it under Rule 126 vide its Notification dated 28.03.2018 which is available on its website. The basis and reason for computing profiteering has been mentioned in Section 171 (1) of the above Act which requires 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." Therefore, it is quite clear that both the above benefits are required to be passed on by reduction in the prices and in case they are not passed on profiteered amount has to be computed as per the provisions of Section 171 (3A) of the above Act. In view of the above facts this contention of the Respondent is not correct.

41. He has further contended that it was settled that in the taxing statutes mechanism for computation of value should be provided. However, this contention of the Respondent is fallacious as no tax has been imposed under Section 171 of the above Act. It would also be appropriate to mention here that under Section 171 (2) this Authority has been constituted to ensure that the provisions of Section 171 (1) are implanted. Rule 123 of the CGST Rules, 2017 provides constitution of Standing Committee at the Central level and Screening

Committees at the State level to prima facie examine the allegations of profiteering which are investigated by the DGAP in detail under Rule 129 (1). This Authority can also seek assistance of the State and Central tax authorities to monitor its orders as per the provisions of Rule 136. Therefore, there is adequate machinery to enforce the anti-profiteering provisions.

42. He has also cited the judgement passed in the case of **Commissioner of Income Tax v. B. C. Srinivasa Setty (1981) 128 ITR 294 (SC)** in his support. Perusal of this judgement shows that it involved valuation of the goodwill for computation of income tax which is not the issue in the present case. Hence, it is respectfully submitted that the above case does not help the Respondent. The Respondent has also relied on the case of **Commissioner of Income Tax v. The Official Liquidator Palai Central Bank Ltd. (1984) 150 ITR 539 (SC)** in which the issue of charging of super profit tax was involved, however, no such issue is involved in the present case, hence the law settled in the above case is not being followed. The Respondent has also cited the judgement passed in the case of **National Mineral Development Corporation v. State of M. P. and another (2004) 65 SCC 281** in his support in which the issue of levy of royalty on 'slimes' was involved hence, the above case is of no help to the Respondent as no such issue is involved in the present case. He has also placed reliance on the law settled in the case of **Larsen & Toubro v. State of Bihar and others 2004 (134) STC 354 (Pat.)** which was affirmed by the Hon'ble Supreme Court in the case of **State of Jharkhand and others v. Voltas Ltd. (2007) 7 VST 317 (SC)**, in which it was held that

in the absence of all exclusions which were to be prescribed for computation of tax, no tax was payable. Perusal of the facts of the above cases shows that they pertain to the issue of works contracts and hence the facts of this case are not similar to the facts of the above cases and hence they do not further the cause of the Respondent. The Respondent has also cited the case of **Commissioner Central Excise & Customs Kerala & others v. Larsen & Toubro 2015 SCC Online SC 738**, supra, in which the issue pertained to the levy of Service Tax on the undivisible works contracts which is not the issue in the present case and hence the above case is not relevant in the facts of the present case.

43. The Respondent has also stated that the Anti-Profiteering provision under the CGST Act and the Procedure & Methodology drafted under Rule 126 was silent on the timing of passing on of the benefit. However, there can be no doubt that the above benefit has to be passed on as soon as the Respondent avails the benefit for discharging his output tax liability by utilising the ITC. Since, the Respondent is utilising the benefit of ITC every month through his GSTR-3B Returns he should also pass on the benefit by commensurate reduction in the price every month. The Respondent cannot use two yardsticks while passing the above benefit by using the ITC every month and by claiming that his buyers would be entitled to get the same when the project would be near completion. The Respondent cannot enrich himself at the expense of vulnerable house buyers by denying them the benefit for more than 4 and half year and use the additional ITC in his business. In case he wants to do so he

should also claim the ITC at the time of completion of the project. There is also no provision in the anti-profiteering measures which mentions that the benefit of ITC would be passed on when the flats would be delivered to the buyers. The execution of the project under the works contract also does not entitle him to pass on the above benefit when the project would be nearing completion. Hence, all the above claims of the Respondent are wrong and hence they cannot be accepted.

44. The Respondent has also submitted that while computing the above benefit the DGAP has not taken in account the rate of tax on those material which were tax free in the pre-GST period. This argument of the Respondent is untenable since the DGAP has computed the benefit of additional ITC by comparing the ratios of ITC which was available to him in the pre and the post-GST period and it is clear from his computation that the Respondent has got additional benefit of 2.61% of the turnover. As discussed in para supra the DGAP has also not calculated the profiteered amount by using averages. Hence, the above arguments of the Respondent are incorrect.

45. The Respondent has further submitted that the DGAP has stated that the total benefit to be passed on by him was Rs. 1,42,06,267/- while he had also admitted that the benefit passed on by the Respondent was Rs. 1,47,68,865/-, and hence he had passed excess benefit to the above Applicant as well as to the other flat buyers. In this connection it would be relevant to mention that as per Table D supra the Respondent has passed on benefit of Rs. 19,500/- to the

Applicant No. 1 against his entitlement of Rs. 15,812/- and hence he has passed on excess benefit of Rs. 3,688/- (Annexur-14 of the Report) to him which has been duly verified by the DGAP from the record. However, the DGAP has not verified the benefit of Rs. 1,36,17,935/- claimed to have been passed on by the Respondent to 784 other buyers (Annexure-14 of the Report) as has been mentioned in the above Table. The DGAP has also not verified the claim of the Respondent of having passed on an amount of Rs. 5,96,355/- on 35 other flats (Annexure-15 of the Report). Similarly, the DGAP has further not verified an amount of Rs. 5,35,075/- which the Respondent has claimed to have passed on in respect of the commercial shops. The Respondent has also not produced any evidence during the course of the proceedings despite clear directions from the Authority nor he has attended the personal hearings afforded to him on 13.06.2019, 01.07.2019 and 11.07.2019 to prove that he has passed on the above amount as benefit of additional ITC. Therefore, there is no ground to accept his above claims. Accordingly, the above amount of Rs. 1,47,49,365/- cannot be treated to have been passed on by the Respondent to his buyers and hence the same cannot be allowed to be adjusted against the ITC benefit.

46. The Respondent has also contended that he had passed on the benefit of ITC on adhoc basis @ Rs. 36.18 per sq. ft. to the Residential flat buyers and @ Rs. 37.52 per sq. ft. to the commercial shop buyers however, he has neither submitted the details of his above computation nor he has submitted the details of the credit notes or the tax invoices or cheques through which the above benefit has

been passed on. His above claims have also not been verified by the DGAP in his Report. Therefore, there is no reliable and cogent evidence available on record due to lack of which the above claims of the Respondent cannot be accepted.

47. The Respondent has further contended that once it was established that he had passed on excess benefit of Rs. 3,688/- to the above applicant the present proceedings were not maintainable. However, the above contention of the Respondent is not maintainable as he has been found to have not passed on the benefit of Rs. 1,47,49,365/- to the other residential and commercial buyers and therefore, the present proceedings are very much maintainable against him as any information obtained by the DGAP during the course of the investigation of the complaint of the above Applicant which discloses commission of an offence under Section 171 of the above Act has to be investigated and brought before this Authority for determination whether the Respondent has passed on the benefit of additional ITC or not.

48. The Respondent has also submitted that the excess payments made to the 799 flat owners aggregated to Rs. 26,20,354/- and hence, in case of only 85 flat owners, it could not be stated that Rs. 20,57,756/- had been short paid which he should have been directed to recover from the above 799 buyers and pay to the 85 buyers. As has been discussed in para supra there is no evidence or record that the Respondent has paid an amount of Rs. 1,47,49,365/- to his buyers. The same has also not been verified by the DGAP nor he has produced any credible evidence before this Authority during the

course of the hearings. Hence, it cannot be held that the Respondent has paid the above amount and accordingly, no direction can be passed to adjust the above amount.

49. The Respondent has also contended that Rule 129 (6) of the CGST Rules, 2017 only provided a time frame of 3 months for concluding an enquiry and It did not provide for profiteering to be determined at any point. In this connection it would be pertinent to mention that profiteering has to be determined as soon as the Respondent avails the benefit of ITC and has no connection with the work in progress as it is to be calculated on the additional benefit of ITC availed by the Respondent.

50. The Respondent has also contended that the DGAP had calculated the profiteered amount as Rs. 1,42,06,267/- whereas he had passed on an amount of Rs. 1,47,68,865/- to the 820 home and 80 commercial shop buyers which was more than the profiteered amount computed by the DGAP. However, perusal of 38 ledger accounts of the buyers which have been submitted by the Respondent to the DGAP shows that there is no evidence to suggest that he had passed on the benefit of Rs. 1,47,68,865/- to the 820 home buyers and 80 commercial buyers on account of ITC as there is no such entry in the ledger accounts of these buyers. A typical entry of Rs. 20,550/- made in the ledger account on 01.11.2018 of one Mr. Ankit Jain, who has been allotted unit No. 2012 in the above project by the Respondent, reads as "Receipt Ref. CR81/01187/18-19 (19,028.00+ Tax 1522.00)" which shows that no where it has been mentioned that this amount has been transferred on account of ITC benefit. Perusal of

the copies of the ledger accounts of the other house buyers to whom the Respondent has claimed to have passed on the benefit of ITC also shows that the same entry has been made in all such cases on 01.11.2018. By no stretch of imagination this entry can be construed to have been made on account of passing on the benefit of ITC, therefore, the above amount cannot be taken to have been passed on account of the ITC benefit, hence, the contention of the Respondent that he had passed on the full benefit of ITC is not correct and therefore, the same cannot be accepted.

51. We also observe that the provisions of Section 171 of the CGST Act, 2017 are aimed at ensuring that the recipients get the commensurate benefit, in the form of reduction in price, in case of any tax rate reduction and/or incremental benefit of ITC which has become available to them due to sacrifice made by the State and the Central Govt. from their own tax kitty to provide accommodation to the vulnerable section of society under the Affordable Housing Scheme. The method of interpretation of this provision has been given in the text of Section 171 of the CGST Act, 2017 itself. We also observe that the said provision clearly links profiteering to be a function of each supply of goods or services or both and hence, profiteering needs to be computed at the level of each tax invoice. From a plain reading of Section 171 of the Act *ibid*, it is amply clear that the total quantum of profiteering by a registered person is the sum total of all the benefits that stood denied to each of the recipients/consumers individually. Therefore, the Respondent is under legal obligation to pass on the



benefit of ITC to his buyers and he cannot be allowed to appropriate the same.

52. Based on the above facts it is clear that the ITC as a percentage of the turnover that was available to the Respondent during the pre-GST period from April, 2016 to June, 2017 was 4.00% and during the post-GST period from July, 2017 to December, 2018, it was 6.61% as per Table B supra and hence it is established that the Respondent has benefited from the benefit of additional ITC to the extent of 2.61% [6.61% (-) 4.00%] of the turnover. Since, the above computations made in Table B have been done on the basis of the Returns filed by the Respondent as well as the information supplied by him therefore, the same can be relied upon.

53. It is also clear from the record that the Central Government, on the recommendation of the GST Council, had levied 18% GST with effective rate of 12% in view of 1/3rd abatement on value on the construction service, vide Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 which was reduced in the case of affordable housing from 12% to 8%, vide Notification No. 1/2018-Central Tax (Rate) dated 25.01.2018. Accordingly, the DGAP has computed the profiteering by comparing the applicable tax rate and ITC available in the pre-GST period when only VAT@ 4.50% was payable with (1) the post-GST period from 01.07.2017 to 24.01.2018, when the effective GST rate was 12% and (2) with the GST period from 25.01.2018 to 31.12.2018, when the effective GST rate was 8%. Accordingly, the DGAP has calculated the profiteered amount or the benefit to be

passed on for the period from 01.07.2017 to 24.01.2018, as Rs. 59,85,094/- for the residential flats and commercial shops, which includes 12% GST on the base profiteered amount of Rs. 53,43,834/-.

He has also computed the amount of benefit of ITC or the profiteered amount that needs to be passed on by the Respondent to his recipients during the period from 25.01.2018 to 31.12.2018 as Rs. 82,21,174/- which includes 12% GST on commercial shops and 8% GST on residential flats, on the base profiteered amount of Rs. 75,83,201/-. Therefore, the total benefit of ITC which is required to be passed on during the period from 01.07.2017 to 31.12.2018, comes to **Rs. 1,42,06,267/-** which includes GST @ 12% or 8% on the base profiteered amount of Rs. 1,29,27,035/- as per Table C of the above Report. The home buyer and unit no. wise break-up of this amount has been given by the DGAP vide **Annex-13** of his Report. This amount is inclusive of Rs. 15,812/- including GST on the base amount of Rs. 14,375/- which is the benefit of ITC which is required to be passed on to the Applicant No. 1, mentioned at Serial No. 409 of Annex-13. Since, Table C has been prepared on the basis of the information reflected in the Returns filed by the above Respondent and the details submitted by him hence, the computations made in the above Table are taken to be correct and accordingly. the profiteered amount is determined as Rs. **1,42,06,267/-** as per the details mentioned above in terms of the provisions of Rule 133 (1) of the CGST Rules, 2017.

54. In view of the above facts this Authority under Rule 133 (3) (a) of the CGST Rules, 2017 orders that the Respondent shall reduce the

prices to be realized from the buyers of the flats commensurate with the benefit of ITC received by him as has been mentioned in detail in the preceding paras of this Order. As per the provisions of Rule 133 (1) (b) of the CGST Rules, 2017 it is further ordered that the Respondent shall refund the above profiteered amount to the flat buyers as per the details given by the DGAP in Annexure-13 without taking in to account the benefit which he has claimed to have passed on. However, no further benefit is to be passed on to the Applicant No. 1 as he has already got the benefit of Rs, 15,812/- which was due to him as has been confirmed by the DGAP. The above amount shall be passed on by the Respondent alongwith interest @18% payable from the date from which the excess amount was collected by the Respondent from the buyers till the date of its payment within a period of 3 months from the date of this order failing which the same shall be recovered by the concerned Commissioner CGST/SGST and paid to the eligible house buyers as per their entitlement as per the provisions of CGST/SGST Acts.

55. Since, the DGAP has carried out the present investigation till 31.12.2018 only any further benefit of additional ITC which might accrue to the Respondent shall also be passed on by him to the eligible buyers. The Commissioner CGST/SGST shall ensure that the above benefit is passed on by the Respondent to his recipients as per the provisions of Section 171 of the CGST Act, 2017. In case if the above benefit is not passed in future the Applicant No. 1 or any other buyer shall be at liberty to approach the Haryana State Screening



Committee to launch fresh proceedings against the Respondent as per Section 171 of the CGST Act, 2017.

56. It is also evident from the above narration of facts that the Respondent has denied benefit of ITC to the buyers of the flats and the shops being constructed by him in his Project 'Synera' in contravention of the provisions of Section 171 (1) of the CGST Act, 2017 and has committed an offence under Section 171 (3A) of the above Act and therefore, he is liable for imposition of penalty under the provisions of the above Section. Accordingly, a Show Cause Notice be issued to him directing him to explain as to why the penalty prescribed under Section 171 (3A) of the above Act read with Rule 133 (3) (d) of the CGST Rules, 2017 should not be imposed on him. Accordingly, the notice dated 28.05.2017 vide which it was proposed to impose penalty under Section 29, 122-127 of the above Act read with Rule 21 and 133 of the CGST Rules, 2017 is withdrawn to that extent.

57. The Authority as per Rule 136 of the CGST Rules 2017 directs the Commissioners of CGST/SGST Haryana to monitor this order under the supervision of the DGAP by ensuring that the amount profiteered by the Respondent as ordered by the Authority is passed on to all the eligible buyers. A Report in compliance of this order shall be submitted to this Authority by the Commissioners CGST/SGST Haryana through the DGAP within a period of 4 months from the date of receipt of this order.



58. A copy each of this order be supplied to both the Applicants, the Respondent, Commissioners CGST/SGST Haryana as well as the Principal Secretary (Town & Country Planning), Government of Haryana for necessary action. File be consigned after completion.

Sd/-
(B. N. Sharma)
Chairman

Sd/-
(J. C. Chauhan)
Technical Member

Sd/-
(R. Bhagyadevi)
Technical Member

Sd/-
(Amand Shah)
Technical Member



Certified copy

(A. K. Goel)
Secretary, NAA

File No. 22011/NAA/41/sign/2019

Dated: 21.11.2019

Copy to:-

1. M/s Signature Global Developers Pvt. Ltd., 1308, 13th floor, Dr. Gopal Das Bhawan, 28 Barakhamba Road, Connaught Place, New Delhi- 110001
2. Sh. Abhishek, House no. 62, Ward No. 9, behind post office, Julana, Jind, Haryana-126101.
3. The Commissioner of State Tax, Vanijya Bhavan, Plot No. 1-3, Sector-5, Panchkula, Haryana- 134151,
4. The Commissioner, CGST Gurugram, Plot no. 36 & 37, Sector-32, Gurugram, Haryana-122001,
5. Principal Secretary to Govt. of Haryana, Town & Country Planning Department, Plot No. 3, Sec-18A, Madhya Marg, Chandigarh-160018,
6. Director General Anti-Profiteering, Indirect Taxes & Customs, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.
7. NAA Website/Guard File.

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