

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

Case No.	67/2019
Date of Institution	10.06.2019
Date of Order	09.12.2019

In the matter of:

1. Sh. Pawan Kumar, sonuitv@gmail.com.
2. Sh. Anil Kumar, anilrana155@gmail.com.
3. Sh. BL Sharma, bls261@gmail.com.
4. Sh. Varun Thakur, varun.thakur121@gmail.com.
5. Ms. Sutirtha Chakraborty, sutirtha_ee@rediffmail.com.
6. Sh. Rakesh Bhargava, smartkids2004@yahoo.com.
7. Sh. Satpal Verma, satpalverma@gmail.com.
8. Sh. Raman Jeet Singh, ramanjeet1980@gmail.com.
9. Sh. Jayant Verma, jay.verma27@gmail.com.
10. Sh. Mohit Kumar Chauhan, mohit.chauhan2673@gmail.com.
11. Sh. Kuldeep Singh, k.chitkara62@yahoo.com.
12. Ms. Shubhra Kochar, geetakochar19@gmail.com.
13. Sh. Dinesh Kumar, kumardinesh1611@gmail.com.
14. Sh. Deepak Chawla, deepak.chawla75@gmail.com.
15. Sh. Bhaskar Kol, kol.bhaskar@gmail.com.
16. Ms. Mishika Kochar, romikochar@gmail.com.
17. Ms. Raj Kumari, amitvmehndiratta@gmail.com.
18. Sh. Puran Lal, puran2010tanwar@gmail.com.



19. Sh. Sanjay Singh Rawat, sanjayr084@gmail.com.
20. Ms. Rajni Nagar, nars0024@gmail.com.
21. Ms. Sandhya Patro, jaykrp@yahoo.com.
22. Ms. Neha Singhal, mailvineet24@gmail.com.
23. Sh. Jitender Kumar, jitenderkrbhorla@gmail.com.
24. Sh. Neeraj Kumar, er.neerajkr@gmail.com.
25. Ms. Mukta Taneja, vaibhavlaneja8@gmail.com.
26. Sh. Rajneesh Jain, rajnrkt@gmail.com.
27. Sh. Lalit Mohan Parashar, lmparashar@gmail.com.
28. Sh. Bhasker Pandey, bhaskermini@gmail.com.
29. Sh. Jitendra Hariramani, jitu@hotmail.com.
30. Ms. Archana Khanna, archana-khanna@hotmail.com.
31. Mr. Asif Khan/Ms. Shahjahan, anshusai070@gmail.com.
32. Sh. R Bisht, bisht.rosnan@hotmail.com.
33. Sh. Nitin Gupta, canitingupta@yahoo.co.in.
34. Sh. Sailesh Dikshit, saileshkumardixit@gmail.com.
35. Sh. Aman Sandhu, sandhu.aman2006@gmail.com.
36. Sh. Bhuwan Chandra, Bhuwan.chandra@hotmail.com.
37. Sh. Deepak Kaul, Kaul.deepak1@gmail.com.
38. Sh. Sarika Jindal, Sarikajindal01@gmail.com.
39. Ms. Ashmeet Nanda, ashmeetnanda@gmail.com.
40. Ms. Prashant Kumari, t.kumari@havells.com.
41. Mrs. Jyoti Kedia, Jyoti.kedia76@gmail.com.
42. Sh. Prem Kumar Dubey, premkrdubey@rediffmail.com.
43. Sh. Ankush Raghav, Ankushraghav09@gmail.com.

44. Sh. Hemant Kumar on behalf of Ms. Geeta Devi,
Hemant0128@yahoo.in.
45. Sh. Shyam Kumar, Kumarshyam1989@gmail.com.
46. Sh. Dinesh Trivedi, dinesh.trivedi87@gmail.com.
47. Sh. Mohit Gupta, mohitgupta@gmail.com.
48. Sh. Sawan Chopra, chopra.sawan303@gmail.com.
49. Sh. Akhil Kumar, akhil.kumar1@yahoo.in.
50. Sh. Sandeep Awasthi, sandeep20april@gmail.com.
51. Sh. Himanshu Jain, himanshujain.inc@gmail.com.
52. Sh. Naveen Jain, jain.naveen34@gmail.com.
53. Sh. Gaurav Sharma, gauravsharma2991@gmail.com.
54. Ms. Shipra Grover, shipragrover04@gmail.com.
55. Sh. Bhagat Singh, bablukumar2008@gmail.com.
56. Sh. Romil Mishra, romil.mishra90@gmail.com.
57. Ms. Kamini Khanduja, kaminikhanduja54@gmail.com.
58. Ms. Kamini Pandey, kaminipndy@gmail.com.
59. Sh. Bhupendra Singh bhupendr2new@gmail.com.
60. Sh. Pawan Singh, pawankumarsingh3500@googlemail.com.
61. Sh. Tarun Aggarwal, tarun.aggarwal1981@gmail.com.
62. Sh. Mukesh Jha, mukeshjha.stpl@gmail.com.
63. Sh. Kishor Sharma, kkrissh25@gmail.com
64. Sh. Pradeep Singh, singh_pradeep1710@yahoo.com.
65. Sh. Ritesh Kumar, Ritesh98765@live.com.
66. Sh. Deepak Bisla, deepakbisla@gmail.com.
67. Sh. Hem Vats, Hemvats6915@gmail.com.
68. Sh. Ritesh Yadav, Ritesh_eye@rediffmail.com.



69. Sh. Balvinder Singh, Balvinder.s.ratan@gmail.com.
70. Sh. Sukhbir Singh, Sukhvirsingh271991@gmail.com.
71. Sh. Kuldeep Kumar, Pandey, Kuldeep.85pndy@gmail.com.
72. 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 S3 Buildwell LLP, 109, Choudhary Complex, 9, Veer Savarkar Block, Shakarpur, Laxmi Nagar, Delhi-110092.

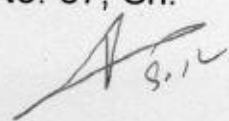
Respondent

Quorum:-

1. Sh. B. N. Sharma, Chairman
2. Sh. J. C. Chauhan, Technical Member
3. Sh. Amand Shah, Technical Member

Present:-

1. Sh. Pawan Kumar, Applicant No. 1, Sh. Anil Kumar, Applicant No. 2, Sh. Sailesh Dikshit, Applicant No. 34, Sh. Prem Kumar Dubey, Applicant No. 42, Sh. Ankush Raghav, Applicant No. 43, Sh. Hemant Kumar on behalf of Ms.Geeta Devi, Applicant No. 44, Sh. Shyam Kumar, Applicant No. 45, Sh. Ritesh Kumar, Applicant No. 65, Sh. Deepak Bisla, Applicant No. 66, Sh. Hem Vats, Applicant No. 67, Sh.



Ritesh Yadav, Applicant No. 68, Sh. Balvinder Singh, Applicant No. 69, Sh. Sukhbir Singh, Applicant No. 70 and Sh. Kuldeep Kumar Pandey, Applicant No. 71 in person.

2. None for the DGAP.
3. None for the Respondent.

ORDER

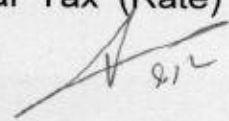
1. The present Report dated 04.06.2019, has been received on 10.06.2019 from the Director General of Anti-Profiteering (DGAP) after detailed investigation under Rule 129 (6) of the Central Goods & Service Tax (CGST) Rules, 2017. The DGAP has reported that a reference was received from the Standing Committee on 07.01.2019 to conduct detailed investigation in respect of applications filed by the Applicants No. 1 to 38 under Rule 128 of the CGST Rules, 2017 alleging profiteering in respect of construction service supplied by the Respondent. The above Applicants had submitted that they had purchased flats in the Respondent's project "Floridaa" situated at Bhatola, Sec-82, Faridabad, Haryana and alleged that the Respondent had not passed on the benefit of input tax credit (ITC) to them by way of commensurate reduction in prices.
2. The Haryana State Screening Committee on Anti-profiteering had originally examined the application of the above Applicants, in its meeting held on 30.10.2018 and observed that there was lesser burden of tax in the GST regime due to availability of ITC, which the Respondent should have passed on to his customers, in terms of

Section 171 of the CGST Act, 2017. The Haryana State Screening Committee had forwarded the said application with its recommendation, to the Standing Committee on Anti-profiteering on 31.10.2018, for further action, in terms of Rule 128 of the CGST Rules, 2017.

3. The Standing Committee on Anti-profiteering, vide the minutes of its meeting held on 11.03.2019, forwarded the above applications along with 3 more applications received from the Applicants No. 39 to 41 in respect of the above project of the Respondent. The above three Applicants had also alleged that the Respondent had not passed on the benefit of ITC by way of commensurate reduction in price, on implementation of GST w.e.f. 01.07.2017.
4. Consequently, the DGAP issued a notice under Rule 129 of the Rules on 15.01.2019 calling upon the Respondent to reply as to whether he admitted that the benefit of ITC had not been passed on to the Applicants by way of commensurate reduction in prices and if so, to suo-moto determine the quantum thereof and indicate the same in his reply to the notice as well as to furnish all supporting documents to substantiate his claim.
5. The period covered by the DGAP in the current investigation is from 01.07.2017 to 31.12.2018 and the construction service was supplied by the Respondent in the State of Haryana only.
6. In response to the notice dated 15.01.2019, the Respondent submitted his replies in parts vide letters and e-mails dated 30.01.2019, 14.02.2019, 21.02.2019, 18.03.2019, 19.03.2019,

28.03.2019, 09.04.2019, 10.04.2019 and 09.05.2019. The reply of the Respondent to the DGAP contained the following: -

- (a) The Respondent submitted that he was in the business of construction of flats under Haryana Affordable Housing Policy, 2013, in a single residential project "Floridaa" situated at Bhatola, Sec-82, Faridabad, Haryana. The project was registered with the Haryana Real Estate Regulatory Authority (HRERA) bearing project registration No. 244 of 2017 dated 26.09.2017 and it comprised of 823 residential flats on an area of 3,95,375 sq. ft. and 45 commercial shops on an area of 14,985 sq. ft.
- (b) The Respondent also submitted that in the pre-GST regime, construction of affordable housing was exempt from Service Tax, vide Notification No. 09/2016-ST dated 01.03.2016, where it was covered by the definition of works contract and attracted Haryana VAT @ 5% (approximately) with full ITC of VAT paid on goods involved in the execution of the project and no tax was levied on labour sub-contract works which was the major portion of the project. On introduction of GST w.e.f. 01.07.2017, the construction of affordable housing was taxable @ 18% (effectively @ 12% after 1/3rd abatement for the value of land), vide Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 which was further reduced to 12% (effectively @ 8% after 1/3rd abatement for the value of land), w.e.f. 25.01.2018, vide Notification No. 01/2018-Central Tax (Rate)



dated 25.01.2018. Therefore, the total indirect tax burden on the project had increased after the introduction of GST.

(c) He also claimed that construction business was very complex and on a provisional basis, he had passed on the benefit of Rs. 2.23 crores (approx.) in the month of January, 2019 as the benefit of additional ITC on introduction of GST, to his customers who had booked flats and commercial shops in the project prior to the introduction of GST and assured that the final benefit which accrued to them post-GST over the period of completion of the project, would be duly passed on at the time of giving possession of the flats. Accordingly, he had requested to drop the proceedings.

(d) The Respondent also requested to stay the present proceedings on the basis of stay granted by the Hon'ble High Court of Delhi in the case of M/s. Abbott Healthcare Pvt. Ltd. on the issue of Constitutional validity of Section 171 of the CGST Act, 2017 and Chapter XV of the above Rules.

7. The Report further stated that the Respondent had submitted the following documents to the DGAP:-

- (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) Copies of VAT & ST-3 returns for the period April, 2016 to June, 2017.
- (d) Copies of all demand letters, sale agreement along with allotment letter, settlement deed and payment details in respect of the Applicants No. 01, 05, 07, 22, 30, 39, 40 and 41 above

- (e) Details of applicable tax rates, pre-GST and post-GST.
- (f) Copy of audited Balance Sheet (including all annexures and profit & loss account) for FY 2016-17 & FY 2017-18.
- (g) Copy of Electronic Credit Ledger for the period 01.07.2017 to 31.12.2018.
- (h) CENVAT/ITC register for the period April, 2016 to December, 2018.
- (i) Details of VAT, Service Tax, ITC of VAT, CENVAT credit for the period April, 2016 to June, 2017 and output GST and ITC of GST for the period July, 2017 to December, 2018 for the project "Floridaa".
- (j) List of home buyers in the project "Floridaa" along with details of commercial shop buyers.
- (k) Details of benefit of ITC passed on to the buyers along with sample customer's ledger.

8. In addition the Respondent, also submitted a copy of flat buyer's agreement dated 31.07.2015, entered by the Applicant No. 1 and demand letters for the sale of flat No. D-0403, measuring 479.98 sq. ft., at the basic sale price of Rs. 4,000/- per sq. ft. and 100 sq. ft. of balcony area at the basic sale price of Rs. 500/- per sq. ft. The details of amounts and taxes paid by the Applicant No. 1 to the Respondent have been furnished in Table-'A' below:-

Table-'A'

(Amount in ₹.)

S. No.	Payment Stage	Due Date	Basic %	BSP	Service Tax	VAT	GST	GST benefit	Total
1	On submission of Application	06.04.2015	5.00%	97,128	3,399	-	-	-	1,00,527
2	Within 15 days of Allotment	25.04.2015	20.00%	3,88,512	13,598	-	-	-	4,02,110
3	Within 6 months of Allotment	09.10.2015	12.50%	2,42,820	8,499	-	-	-	2,51,319
4	Within 12 months of Allotment	09.04.2016	12.50%	2,42,820	-	-	-	-	2,42,820
5	Within 18 months of Allotment	09.10.2016	12.50%	2,42,820	-	-	-	-	2,42,820

6	Within 24 months of Allotment	09.04.2017	12.50%	2,42,820	-	-	-	-	2,42,820
7	Within 30 months of Allotment	09.10.2017	12.50%	2,42,820	-	-	29,138	-	2,71,958
8	Within 36 months of Allotment	09.04.2018	12.50%	2,42,820	-	-	19,426	-	2,62,246
9	Change in Size	01.03.2018	-	27,360	-	-	2,189	-	29,549
10	Miscellaneous (IFMS, VAT,	11.01.2019	-	25,000	-	72,846	-	(29,138)	68,708
Total			100.00%	19,94,920	25,496	72,846	50,753	(29,138)	21,14,877

9. The DGAP on examining the various documents observed that the Respondent had claimed that he had already passed on the benefit of ITC even before initiation of the present proceedings, to the Applicants and other recipients who had booked flats and commercial shops in pre-GST regime and had assured that the final benefit which would accrue to them post-GST over the period of completion of the project, would be duly passed on at the time of giving possession of the flats. He also filed his statement of accounts vide his letter dated 10.04.2019 stating that he had passed on benefit amounting to Rs. 11,43,230/- to the Applicants on 11.01.2019 which worked out to Rs. 50/- per sq. ft. (approx.) of the carpet area including balcony. But since 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 Rules, the DGAP examined the ITC available to the Respondent and the turnover received by him from the Applicants and other recipients post implementation of GST and after taking into account the benefit of ITC that is required to be passed on by the Respondent to his recipients arrived at the estimated benefit.

10. The DGAP also stated that the Hon'ble High Court of Delhi, in the case of M/s. Abbott Healthcare Pvt. Ltd. vs. Union of India & others, vide order dated 24.04.2019, had granted conditional stay on further proceedings to investigate profiteering on all the products supplied by M/s. Abbott Healthcare Pvt. Ltd., but there was no such stay on the present proceedings. Therefore, the contention of the Respondent to stay the current proceedings was not acceptable.
11. After detailed investigation, the DGAP in his Report dated 04.06.2019, observed 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) which reads as "Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building". Further, clause (b) of Paragraph 5 of Schedule II of the CGST Act, 2017 reads as "*(b) construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier*". Therefore the ITC pertaining to the residential units which were under construction but not sold, was provisional ITC which might be required to be reversed by the Respondent, if such units remained unsold at the time of issue of the Occupancy 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 subsection (2) shall be such as may be prescribed and shall include supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building”.

Therefore, ITC pertaining to the unsold units might not fall within the ambit of his investigation and the Respondent was required to recalibrate the selling price of such units to be sold to the prospective buyers by considering the net benefit of additional ITC available to him post-GST.

12. The DGAP also observed that prior to 01.07.2017, i.e., before introduction of GST the service of construction of affordable housing provided by the Respondent, was exempt 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 also not eligible to avail CENVAT credit of Central Excise duty paid on the 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 for both the residential units and the commercial shops sold by him. The Respondent was also eligible to avail ITC of VAT paid on the inputs. Further, post-GST, the Respondent could avail ITC of GST paid on the inputs and the input services including the GST paid by the sub-contractors.

13. Based on the data made available by the Respondent for the period April, 2016 to December, 2018, with regard ITC availed by him and taking into account his turnover for the project "Floridaa", the DGAP has arrived at the ITC ratio to the turnover, during the pre-GST (April, 2016 to June, 2017) and the post-GST (July, 2017 to December, 2018) periods, which is furnished in the Table-'B' 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)	12,74,974	4,08,803	16,83,777	-	-	-
2	Input Tax Credit of VAT Paid on Purchase of Inputs (B)	91,41,753	45,18,287	136,60,040	-	-	-
3	Total CENVAT/Input Tax Credit Available (C)= (A+B)	104,16,727	49,27,090	153,43,817	-	-	-
4	Input Tax Credit of GST Availed (D)	-	-	-	218,24,834	181,02,537	399,27,371
5	Turnover from Commercial Shops as per ST-3 return (E)	208,43,044	109,98,811	318,41,855	-	181,38,711	-
6	Turnover from residential flats as per VAT Returns as per Annex-22 (F)	3361,13,395	1482,12,584	4843,25,979	-	3048,02,496	-
7	Total Turnover (G)	3569,56,439	1592,11,395	5161,67,834	1929,17,285	3229,41,207	5158,58,492
8	Total Saleable Carpet Area (Excluding Balcony Area) (in SQF) (H)	3,95,375 (Residential)	14,985 (Commercial)	4,10,360	3,95,375 (Residential)	1,4985 (Commercial)	4,10,360
9	Total Sold Carpet Area (Excluding Balcony Area) (in SQF) relevant to turnover (I)	3,50,240 (Residential)	8,841 (Commercial)	3,59,081	3,81,471 (Residential)	9,177 (Commercial)	3,90,648
10	Relevant ITC [(J)= (C)*(I)/(H)] or [(J)= (D)*(I)/(H)]			1,34,26,438			3,80,09,425
	Ratio of Input Tax Credit to Turnover [(K)=(J)/(G)*100]			2.60%			7.37%

14. The DGAP has claimed in the above Table-'B', 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 2.60% and during the post-GST period (July, 2017 to December, 2018), it was 7.37% and therefore the Respondent had benefited from additional ITC to the tune of 4.77% [7.37% - 2.60%] of the turnover.
15. The DGAP has also stated 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 sq. mtr. 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 issue of profiteering had been examined by the DGAP in two parts, i.e., by comparing the applicable tax rate and ITC available in the pre-GST period (April, 2016 to June, 2017) when only VAT@ 5% was payable with the post-GST period from 01.07.2017 to 24.01.2018, when the effective GST rate was 12% and with the GST period from 25.01.2018 to 31.12.2018, when the effective GST rate was 8%. Accordingly, based on the analysis at Table-'B' above, the comparative figures of the ratio of ITC availed/available to the turnover in the pre-GST and post-GST periods as well as the turnover, the recalibrated base price and the excess realization (Profiteering) during the post-GST period, has been tabulated in Table-'C' below:-

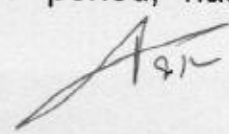


Table-'C'

(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 - 'D' above (%)	C	7.37	7.37	7.37	7.37
4	Increase in input tax credit availed post-GST (%)	D= 7.37% less 2.60%	4.77	4.77	4.77	4.77
5	Analysis of Increase in input tax credit:					
6	Base Price raised during July, 2017 to December, 2018 (Rs.)	E	19,29,17,285	1,81,38,711	30,48,02,496	51,58,58,492
7	GST raised over Base Price @12% or 8% (Rs.)	F= E*B	2,31,50,074	21,76,645	2,43,84,200	4,97,10,919
8	Total Demand raised	G=E+F	21,60,67,359	2,03,15,356	32,91,86,696	56,55,69,411
9	Recalibrated Base Price	H= E*(1-D) or 95.23% of E	18,37,15,131	1,72,73,494	29,02,63,417	49,12,52,042
10	GST @12% or 8%	I = H* B	2,20,45,816	20,72,819	2,32,21,073	4,73,39,708
11	Commensurate demand price	J = H+I	20,57,60,946	1,93,46,314	31,34,84,490	53,85,91,750
12	Excess Collection of Demand or Profiteering Amount	K= G-J	1,03,06,413	9,69,042	1,57,02,205	2,69,77,661

16. The DGAP has further claimed that from the data given above it was clear that the additional ITC of 4.77% of the turnover should have been passed on to the buyers in terms of reduction in the prices of the flats. By not doing so the Respondent had in terms of Section 171 of the CGST Act, 2017, denied the benefit of such additional ITC which was required to be passed on to the recipients.

17. The DGAP has further intimated that on the basis of the aforesaid CENVAT/ITC availability in the pre and post-GST periods and the details of the amount collected by the Respondent from the Applicants and other recipients during the period 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, was Rs. 1,03,06,413/- for

residential flats and commercial shops, which included 12% GST on the base profiteered amount of Rs. 92,02,154/-. Further, the amount of benefit of ITC that needed to be passed on by the Respondent to the recipients during the period 25.01.2018 to 31.12.2018, was Rs. 1,66,71,248/- which included 12% GST on commercial shops and 8% GST on residential flats, on the base profiteered amount of Rs. 1,54,04,296/-. Therefore, the total benefit of ITC to be passed on during the period 01.07.2017 to 31.12.2018, was Rs. 2,69,77,661/- which included GST (@ 12% or 8%) on the base amount of Rs. 2,46,06,450/-. The home buyer and unit no. wise break-up of this amount was given in Annex-25 of the DGAP Report. This amount was inclusive of Rs. 11,24,124/- (including GST on the base amount of Rs. 10,24,023/-) which was the benefit of ITC required to be passed on to the Applicants.

18. The Report also stated that all 823 flats and 45 commercial shops were booked till 31.12.2018 but the above computation of profiteering was only in respect of 795 home buyers and 28 commercial shop buyers from whom consideration had been received by the Respondent during the period 01.07.2017 to 31.12.2018. The Report also submitted that out of the total 823 flats and 45 commercial shops, 45 customers had booked the flats (28) and commercial shops (17) in the pre-GST period and paid amounts in the pre-GST period but they had not paid any consideration during the post-GST period from 01.07.2017 to 31.12.2018 (period covered by investigation). Therefore the DGAP stated that if the ITC in respect of these 45 units

was taken into account to calculate profiteering in respect of 823 units (795 flats and 28 commercial shops) where payments had been received in the post-GST period, the ITC as a percentage of turnover would be distorted and erroneous. Hence, the benefit of ITC in respect of these 45 units (28 residential flats and 17 commercial shops) was not taken into account.

19. The DGAP has also intimated that the Respondent submitted that he had passed on the benefit of Rs. 2,22,85,626/- to the buyers of flats and commercial shops. A summary of category-wise ITC benefit required to be passed on and the benefit claimed to have been passed on by the Respondent, has been furnished in Table-'D' below:

Table-'D'

(Amount in Rs.)

S. No.	Category of Customers	No. of Units	Area (in Sqf)	Amount Received Post GST	Benefit to be passed on as per Annex-25	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	Co-applicants (Residential)	40	19227.48	195,21,437	10,23,845	11,43,230	(1,19,385)	Excess Benefit Passed on as per Annex-26
2	Co-applicant (Residential)	1	474.14	19,46,560	1,00,279	-	1,00,279	Flats Booked post-GST. Further
3	Other Buyers (Residential)	85	40,811	1455,46,052	75,27,297	-	75,27,297	Benefit to be passed on as per Annex-27
4	Other Buyers (Residential)	669	3,21,432	3221,08,418	168,97,895	196,14,602	(27,16,707)	Excess Benefit passed on. List Attached as Annex-28
5	Other Buyers (Residential)	28	13,431	-	-	732280	(7,32,280)	No consideration paid post-GST, However, Respondent have passed on benefit. List Attached

								as Annex-28.
	Total Residential (A)	823	3,95,375	4891,22,467	255,49,316	214,90,112		
6	Commercial Shop Buyers	20	6,408	180,96,754	9,66,801	4,46,209	5,20,592	Further Benefit to be passed on as per Annex-29
7	Commercial Shop Buyers	7	2,415	83,71,414	4,47,234	-	4,47,234	Shops booked post-GST. Further Benefit to be passed on as per Annex-30
8	Commercial Shop Buyers	1	354	2,67,857	14,310	19,376	(5,066)	Excess Benefit passed on. List Attached as Annex-31
9	Commercial Shop Buyers	17	5,808	-	-	3,29,929	(3,29,929)	No Consideration Paid Post-GST, However, Respondent passed on benefit. List Attached as Annex-31
	Total Commercial (B)	45	14,985	267,36,025	14,28,345	7,95,514		
	Grand Total (C)=(A)+(B)	868	4,10,360	5158,58,492	269,77,661	222,85,626		

20. The DGAP has claimed from the above Table 'D' that the benefit claimed to have been passed on by the Respondent to the recipients was less than what he should have passed on in case of 86 residential flats (Sr. No. 2 & 3 of above Table), by an amount of Rs. 76,27,576/- and in case of 27 commercial shops (Sr. No. 6 & 7 of above Table), by an amount of Rs. 9,67,826/-. Further, the Report claimed that the benefit claimed to have been passed on by the Respondent was higher than what they should have been passed on, in respect of 737 residential flats including 40 Applicants (Sr. No. 1, 4 & 5 of above Table), by an amount of Rs. 35,68,372/- and in case of

18 commercial shops (Sr. No. 8 & 9 of above Table), by an amount of Rs. 3,34,995/-. The Report also stated that this excess benefit claimed to have been passed on to some recipients by the Respondent could not be set off against the additional benefit required to be passed on to the other recipients but it could be adjusted against any future benefit that might accrue to such recipients.

21. Further, the DGAP in his Report stated that the Respondent had also submitted that he had sold 7 commercial shops and 86 residential flats post introduction of the GST to the prospective buyers at a mutually agreed price after considering the change (increase/reduction) in cost due to change in GST or discounts offered. Accordingly, the post-GST buyers had no right to claim any benefit and therefore, the Respondent was not obliged to refund the excess amount of Rs. 80,74,810/- collected from such buyers to whom flats and commercial shops were sold post-GST (Sr. No. 2, 3 & 7 of Table-'D') on account of benefit of additional ITC.
22. Consequently, the DGAP concluded that the benefit of additional ITC to the tune of 4.77% of the turnover, accrued to the Respondent post-GST was required to be passed on by him to the Applicants and other home buyers. Accordingly the DGAP submitted that the Respondent had contravened the provisions of Section 171 of the CGST Act, 2017, in as much as the additional benefit of ITC @4.77% had not been passed on by the Respondent to 113 recipients (86 buyers of residential flats and 27 buyers of commercial shops). The Report also

stated that though the Respondent claimed to have passed on excess amount of Rs. 1,19,385/- to 40 Applicants as mentioned in Sr. 1 of Table-'D', the investigation revealed that the Respondent had realized an additional amount of Rs. 1,00,279/- from the Applicant mentioned at Sr. No. 2 of Table-'D' and the Applicant No. 24 and Rs. 84,95,123/- from 112 other recipients (85 home buyers and 27 shop buyers) as mentioned at Sr. No. 3, 6 & 7 of Table-'D'. These recipients were identifiable as per the documents provided by the Respondent, giving the names and addresses along with unit no. allotted to such recipients and therefore, the additional amount of Rs. 84,95,123/- was required to be returned to such eligible recipients.

23. The above Report was considered by the Authority in its meeting held on 11.06.2019 and accordingly the Applicants and the Respondents were asked to appear before the Authority on 25.06.2019 for hearing. Six personal hearings were accorded to the interested parties on 04.07.2019, 18.07.2019, 06.08.2019, 22.08.2019, 17.09.2019 & 04.10.2019 wherein Sh. Pawan Kumar, Applicant No. 1, Sh. Anil Kumar, Applicant No. 2, Sh. Sailesh Dikshit, Applicant No. 34, Sh. Prem Kumar Dubey, Applicant No. 42, Sh. Ankush Raghav, Applicant No. 43, Sh. Hemant Kumar on behalf of Ms. Geeta Devi, Applicant No. 44, Sh. Shyam Kumar, Applicant No. 45, Sh. Ritesh Kumar, Applicant No. 65, Sh. Deepak Bisla, Applicant No. 66, Sh. Hem Vats, Applicant No. 67, Sh. Ritesh Yadav, Applicant No. 68, Sh. Balvinder Singh, Applicant No. 69, Sh. Sukhbir Singh, Applicant No. 70 and Sh. Kuldeep Kumar Pandey, Applicant No. 71

were present. None appeared for the Respondent and the DGAP. Further, the Applicants No. 42 to 71 were also made party by the Authority in the present proceedings on their request.

24. The above Applicants in their submissions dated 25.06.2019 have stated that the Respondent's claim that he had passed on the ITC benefit to them was incorrect instead he was demanding 1 lakh more from them at the time of possession and substantial amount of this in cash. They also submitted that the Affordable Housing Policy 2013 stated that the Respondent will not take any charges for maintenance till 5 years after the possession of the property, but on the contrary, he was demanding cash for electricity and maintenance charges and till date had not given them any official offer for possession. The Applicant No. 1 also submitted copy of the Builder Buyer Agreement, copy of the last demand letter from the Respondent, copy of HUDA Affordable Policy 2013 & copy of Part Occupation Certificate (OC) which the Respondent had received. Further, the Applicants in their submission dated 22.08.2019 submitted that they agreed with the DGAP's Report.

25. Supplementary Report was sought from the DGAP on the issues raised by the above Applicants through their above submissions. The DGAP vide his Report dated 01.07.2019 has claimed that the DGAP had already furnished the investigation Report of the case on 04.06.2019 as required under Rule 129(6) of the CGST Rules, 2017, based on the facts of the case and the submissions of the Respondent and the Applicants during the investigation. The issue of

passing on the benefit of ITC had been addressed in para-17 and Annexure-19 of the DGAP's Report dated 04.06.2019. Further, the grievance of the Applicants regarding collection of amounts towards maintenance charges, electricity etc. was outside the scope of the investigation conducted by the DGAP.

26. The Respondent was not present in any hearing. However, the Respondent has filed his written submissions on 05.08.2019 in which the Respondent has raised objections on the DGAP's Report dated 04.06.2019. He submitted that the DGAP had made a finding against him that he had benefited from additional ITC of 4.77% of the turnover which was based on the calculation made by applying the average method on his own accord and the Respondent had not been given any opportunity to either controvert or respond to the DGAP for adopting the average basis for determining the alleged profiteering.

27. The Respondent contended that Rule 126 of the CGST Rules, 2017 directed the Authority to prescribe the "Procedure and Methodology and for determining whether the reduction in the rate of tax on the supply of goods or services or the benefit of ITC has been passed on by the registered person to the recipient by way of commensurate reduction in prices". The Authority had accordingly drafted the Procedure and Methodology comprising of 41 paras but did not provide the basis, method and reasoning for computing any alleged contravention of the provisions of section 171 of the CGST Act, 2017. Further, the DGAP had not explained as to why the average method

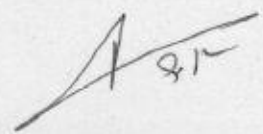
was being adopted for computing any alleged benefit of additional ITC. The average method had been adopted unilaterally by the DGAP without the same being prescribed in any provision of GST Act, 2017 or Rules framed thereunder.

28. The Respondent has also stated that it was trite law that for taxing statutes, to provide a mechanism for computation of value on which tax was to be paid. It had been held by several Courts including the Apex Court that in 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. The Respondent has quoted the following cases in this regard:-

- B.C.Srinivasa Setty (1981) 128 ITR 294 (SC)
- Palai Central Bank Ltd. (1984) 150 ITR 539 (SC)
- National Mineral Development Corporation (2004) 65 SCC 281

Further, the Respondent has relied on the following judgements:

1. Larsen & Toubro v State of Bihar (2004) 134 STC 354 (Pat.) affirmed by Supreme Court in Voltas Ltd., (2007) 7 VST 317 (SC), where in the Hon'ble High Court had held that in absence of all exclusions which are to be prescribed for computation of tax, no tax is payable. It is also submitted that the said judgment was also quoted by the Hon'ble Supreme Court in State of Jharkhand v. Voltas Ltd., East Singhbhum, (2007) 9 SCC 266.



29. The Respondent has contended that the Anti-Profiteering provisions under the CGST Act, 2017 and the Procedure & Methodology drafted under Rule 126 of the CGST Rules, 2017 was silent on the timing of benefit accrued on the agreement entered in pre-GST regime & transfer of property in goods/services executed in the GST regime, and the passing on of the same to the buyer especially for unfinished projects. In a 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. In a conventional case, the provision of anti-profiteering came into effect from the time; the recipient received the goods/services.
30. The Respondent has also stated that he was engaged in the development of Affordable Group Housing residential flats. The project commenced on 25.01.2015 and was completed on 09.01.2019 (the completion certificate has not been received yet). Intimation offering possession to the buyers was sent on 10.01.2019. The transaction entered with the buyer has been covered under the definition of 'works contract' involving undivided share of land, transfer of property in goods and services. It was thus a composite works contract. Thus, during the period covered by the arbitrary calculation of profiteering by the average method i.e. 01.07.2017 to 31.12.2018, the project was under completion. And therefore, the Report of DGAP could have been based on the calculations made by the Respondent. He pleaded that profiteering, if any, could only be

determined once the project was nearing completion and all costs, inputs, claims and contingencies had to be determined and concretized, had been ignored by the DGAP.

31. The Respondent has also referred to para 17 of the DGAP's Report wherein he had stated that profiteering, if any, should be determined within the ambit of the Rule 129(6) of the CGST Rules, 2017 and should be within the framework of profiteering computed by the DGAP. He further claimed that the DGAP's calculations were ad hoc which he also has done on the basis of averages. Therefore he claimed profiteering, if any, could be determined only on completion of the project.
32. The Respondent has further submitted that the DGAP in his Report has ascertained profiteering @ 4.77% by the average method on the ITC claimed during pre and post GST regime. The average method adopted by the DGAP in Table 'D' of his Report suffered from serious errors as certain inputs in construction work including bricks, stone, dust stone aggregate etc. were exempt from VAT in pre-GST period. In post GST period, such inputs attracted GST @ 5%. Therefore, while computing ITC, the amount of GST collected on such exempted goods had also been considered by the DGAP which was detrimental to the Respondent.
33. He further referred Table 'F' of the DGAP's Report and claimed that as per Column 'F' of Table 'F' of the Report, the total benefit which was required to be passed on to the flat owners had been computed as Rs 2,69,77,661/-. However, as per Column 'G' of Table 'F', the DGAP had noted that the total benefit claimed to have been

passed on by the Respondent came to Rs. 2,22,85,626/-, which was part of the Report as Annexure-26, 28 & 29. Thus as per the DGAP's Report, the Respondent has passed on the ITC benefit of Rs. 2,22,85,626/- under the provisions of Section 171 of the CGST Act, 2017 at the time of offering possession on ad hoc basis which reflected his responsibility to comply with the provisions of the statute. The Respondent has determined the estimated benefit of ITC to be passed on to the flat owners on ad hoc basis as follows:-

- a. Residential flat owners-the ITC benefit in comparison with the pre-GST era was determined on ad hoc basis @ Rs. 60.69/- per sq. ft.
- b. For commercial shop buyers-the ITC benefit was determined on ad hoc basis @ Rs. 63.28/- per sq. ft.

34. Further, the Respondent disputed the observation made by the DGAP at para 28 of his Report that he should not set off the excess payment made to certain flat owners from the alleged short credits allowed to the other flat owners. He claimed that he was in the process of handing over the possession of the flats and once it was done it would be difficult for him to recover the excess payments. The Respondent has also submitted that he had launched the subject project on 25.01.2015 & occupation certificate was received on 09.01.2019. There was no inventory of unsold units left on the date of issue of occupation certificate from the competent authority.

35. The Respondent further contended that the observation made by the DGAP in his Report that the Applicants numbering 40 had been paid an excess amount of Rs. 1,19,385/- meant that he had addressed the

grievance of the Applicants who had filed the complaints. He also claimed that 85 residential flats and 7 commercial shops which were booked in the post-GST where the DGAP had held that benefit of ITC was to be passed on was not acceptable since the transaction was commenced and completed in the post GST period and the buyers were aware and had accepted the transaction rate during the post GST period.

36. The Respondent also submitted that he had passed on the benefit to 28 home buyers amounting to Rs. 7,32,280/- despite the fact that those Applicants did not make any payment during the post GST period. He claimed that the entire payment from such home buyers was received in the pre GST period and accordingly this amount also should be viewed as an excess payment made by him.
37. Supplementary Report was sought from the DGAP on the issues raised by the Respondent. The DGAP vide his Report dated 21.08.2019 has claimed that in terms of Section 171 of the CGST Act, 2017, each and every recipient should receive the benefit of ITC and excess benefit passed on to some recipients cannot be set off with further benefit required to be passed on to other recipients.
38. Further, the Authority sought clarification from the DGAP under Rule 133(2A) of the CGST Rules, 2017 that in earlier cases, the DGAP had considered only total saleable area but in this present case, the DGAP had considered "Total Saleable Carpet Area (Excluding Balcony Area) in Table-'D' of the DGAP's Report dated 04.06.2019. The DGAP in his supplementary Report dated 30.09.2019 stated that as per the Notification No. PF-27/48921 dated 19.08.2013 of the

Town And Country Planning Department of Haryana Government, a comprehensive "Affordable Housing Policy 2013" under the provisions of Section 9A of the Haryana Development and Regulation of Urban Areas Act, 1975 was notified wherein the "Allotment Rates; Allotment & Eligibility Criteria" was explained. In para 4 (ii) (c) of the notification the definition of carpet area and balcony has been excluded. As per the provisions therein maximum allotment rate on per sq. ft. carpet area basis for the Apartment units under such approved projects has been fixed as Rs. 4,000/- per sq. ft. in Gurgaon, Faridabad, Panchkula, Pinjore-Kalka, Rs. 3,600/- per sq. ft. for other High and Medium Potential Towns and Rs. 3,000/- per sq. ft. for Low Potential Towns. The DGAP further stated as per the above notification in case there was any balcony area which was approved free-of-FAR, additional recovery could be made for it @Rs. 500/- per sq.ft. flat adding upto and limited to 100 sq.ft. Hence the DGAP in his Report while determining the proportionate relevant ITC, had taken only the Carpet Area as specified in the notification.

39. We have carefully considered the Report of the DGAP, submissions made by the Respondent and based on the record it is revealed that the Respondent is in the Real Estate business and the DGAP's Report is with regard to his project namely "Floridaa" an affordable housing project in Bhatola, Sec-82, Faridabad, Haryana. On examining the various submissions we find that the following issues need to be addressed:-



a. Whether there was any net additional benefit of ITC to the Respondent?

b. Whether there was any violation of the provisions of Section 171 of the CGST Act, 2017, by not passing on the benefit ITC by the Respondent?

40. The Respondent has through his submissions 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 15.01.2019 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 has 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 04.07.2019, 18.07.2019, 06.08.2019, 22.08.2019, 17.09.2019 & 04.10.2019. Though the Respondent has alleged that hearing notices were received late but it's a fact that 6 hearings were provided and he

had enough opportunity between 4th July 2019 to 4th Oct, 2019 to appear in any of the hearings to present his case. Unfortunately, he had not appeared in any of these hearings and this shows his non-seriousness towards the present proceedings. Therefore, he has wasted the precious time of the Authority.

41. The second objection of the Respondent is that confidential documents were allowed to be accessed by the Applicants. The Applicants who appeared in most of the hearings had requested for providing certain documents to verify as to whether the calculations of the DGAP were as per the buyer's agreement and payment schedule provided to them. Therefore, to meet the ends of justice, it was essential to provide access to the documents to the Applicants.

42. The issue of arbitrary estimation of 4.77% benefit by the DGAP was baseless as has been claimed by the Respondent. The DGAP has clearly taken the payment schedule into account, ITC available from April 2016 to June, 2017 (pre-GST period) alongwith the turnover for the same period and has calculated the ITC ratio as 2.6%. Similarly, for the post-GST period i.e. 01.07.2017 to 31.12.2018, the ITC ratio has been calculated as 7.37%. Based on this ratio, the additional benefit has been arrived at 4.77% (7.37%-2.6%). These facts are based on the data provided by the Respondent, the returns and the homebuyers' turnover as per the various documents filed by the Respondent.

43. The Respondent in his written submissions filed on 05.08.2019 has also claimed that the DGAP's Report dated 04.06.2019 had

recorded incorrect findings by stating that he had benefited from additional ITC of 4.77% of the turnover, as this finding was based on the average method applied by the DGAP on his own accord. However, careful perusal 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 shown by the Respondent in his Service Tax and the VAT Returns filed during the above period. Likewise, the computation of ratio of ITC to turnover for the period from July, 2017 to December, 2018 is based on his post-GST Returns. The figures of turnover for both the above periods have also been extracted from his Returns. The Respondent had himself submitted 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 untenable.

44. 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 and under Rule 126 of the above Rules. In this regard, 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 for ready reference. The basis and reasons for computing profiteering have been mentioned in Section 171 (1) of the above Act

which require 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 very 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 acceptable.

45. Further, the Authority in its various orders has held that the mathematical methodology cannot be a set formulae but depended on various parameters and facts of each case. The mathematical methodology followed in the case of goods may be different from the services. Similarly, it could vary from restaurant service to construction service and within the construction service, it will vary based on the status of the construction of the project at the time of the introduction of GST, payment plan adopted by the buyers, timings of the purchase of inputs etc. and therefore, no fixed mathematical methodology can be employed.

46. 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 apt 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. Moreover, Section 171 does not impose any tax and hence no charge can be created under it which requires machinery to impose it.

47. He has also mentioned the judgement passed in the case of **Commissioner of Income Tax v. B. C. Srinivasa Setty (1981) 128 ITR 294 (SC)** in support of his argument. Careful 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 submitted that the above case is not relevant in case of the Respondent. The Respondent has also referred the case of **Commissioner of Income Tax v. The Official Liquidator Palai Central Bank Ltd. (1984) 150 ITR 539 (SC)** wherein the issue of charging of super profit tax was taken up, 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 relied upon the decision passed in the case of **National Mineral Development Corporation v. State of M. P. and another (2004) 65 SCC 281** in his support wherein the issue of levy of royalty on 'slimes' was involved hence, it is pertinent to mention here that the above case has no relevance in case of the Respondent as no such issue is involved in

the present case. He has also referred to 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 decided that in the absence of all exclusions which were to be prescribed for computation of tax, no tax was payable. Careful perusal of the facts of the above cases shows that they relate to the issue of works contracts and hence the facts of this case are not same to the facts of the above cases and therefore they are not of any help to the Respondent. The Respondent has also mentioned the case of **Commissioner Central Excise & Customs Kerala & others v. Larsen & Toubro 2015 SCC Online SC 738**, supra, in which the issue involved, is the levy of Service Tax on the undivisible works contracts which is not the matter in the present case and therefore the above case has no relevance in the facts of the present case.

48. 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 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 completed. 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 furtherance of his business. In case he wishes to do so he should also claim the ITC after 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 completed. Hence, all the above claims of the Respondent are unwarranted and hence they cannot be accepted.

49. The Respondent has also submitted that while computing the above benefit the DGAP has not taken into 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 4.77% 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.

50. 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 prices, in case of

any tax rate reduction and/or incremental benefit of ITC which has become available to them due to sacrifice of revenue by the State and the Central Govt. from their own tax pool 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 very 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.

51. We also observe that the DGAP after estimating the profiteered amount as Rs. 2,69,77,661/- has noted that the Respondent had claimed to have passed on the benefit of Rs. 2,22,85,626/-. If the benefit claimed to have been passed on by the Respondent is accepted and taken into account, the DGAP has computed the profiteering to be Rs. 75,27,297/- only for 85 homebuyers and Rs. 9,67,826/- for 27 commercial shops. However, the Applicant No. 1 vide his letter dated 25.06.2019 has refuted the claim by the Respondent that the ITC benefit has been passed on as he has not passed on any benefit to him. Instead the above Applicant has

claimed that extra amount was charged for maintenance and other purposes. This was endorsed by the other homebuyers who had appeared during the hearing. Moreover, the claim of the Respondent has not been verified by the DGAP nor he has produced any documentary proof of ITC benefit passed on by the Respondent. The DGAP in his Report has clearly stated 'Benefit claimed to have been passed on' under column-G of Table-F of his Report dated 04.06.2019. The Respondent has also not produced any document to show that the benefit of ITC has been passed on to the homebuyers. It is also not clear from the DGAP's Report as to whether the benefit of ITC has been passed on through credit notes or cheques. Therefore, the Report of the DGAP relating to the claim made by the Respondent that he had passed on the benefit of ITC in some cases cannot be accepted since no evidence been adduced before this Authority.

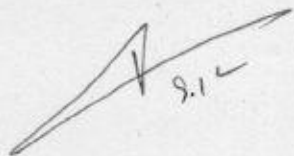
52. The Authority based on the facts discussed above and based on the various parameters as discussed in the Table-B above determines the additional benefit of the ITC ratio as 4.77%. Based on this ratio, taking into consideration, the turnover of the post-GST period, the profiteered amount for the period 01.07.2017 to 24.01.2018 is determined as Rs. 1,03,06,413/- for residential flats and commercial shops which includes 12% GST on base profiteered amount of Rs. 92,02,154/-. For the period 25.01.2018 to 31.12.2018, the profiteered amount is determined as Rs. 1,66,71,248/- which includes 12% GST on the commercial shops and 8% GST on residential flats on the

base profiteered amount of Rs. 1,54,04,296/-. Therefore, the total benefit of ITC to be passed on during the period 01.07.2017 to 31.12.2018, comes to Rs. 2,69,77,661/- which includes GST@ 12% or 8% as applicable on the base amount of Rs. 2,46,06,450/-. Accordingly, the above amounts shall be paid to the above Applicants and the other eligible house buyers by the Respondent along with interest @18% from the date from which these amounts were realised from them till they are paid as per the provisions of Rule 133 (3) (b) of the CGST Rules, 2017, failing which they shall be recovered by the concerned Commissioner CGST / SGST and paid to the eligible house buyers.

53. From the above discussions it is clear that the Respondent has profiteered by an amount of Rs. 2,69,77,661/- during the period of investigation. Therefore, in view of the above facts, this Authority under Rule 133 (3) (a) of the CGST Rules, 2017, orders that the Respondent shall reduce/refund the price to be realized from the buyers of the flats commensurate with the benefit of ITC received by him as has been detailed above. As far as the final computation of the additional ITC that will be available to the Respondent is concerned, the same could not be determined at the time of investigation by the DGAP, as the construction of the project was yet to be completed. However during the course of proceedings, the Respondent has submitted that he has received occupation certificate on 09.01.2019 and there was no inventory of unsold units left on the date of issue of occupation certificate. As the present investigation has been

conducted only up to 31.12.2018, therefore, we order that any additional benefit of ITC, which may accrue to the Respondent subsequently, shall also be passed on by him to all the eligible buyers. In case this additional benefit is not passed on to the Applicants No. 1 to 71 or to other eligible buyers, they shall be at liberty to approach the Haryana State Level Screening Committee for initiating fresh proceedings under the provisions of Section 171 of the above Act against the Respondent. The concerned jurisdictional CGST or SGST Commissioner shall take necessary action to ensure that the benefit of additional ITC was passed on to the eligible house buyers in future.

54. It is also evident from the above narration of facts that the Respondent has denied benefit of ITC to the buyers of the flats being constructed by him 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 12.06.2019 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.

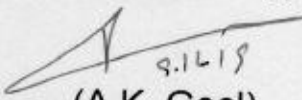


55. Further the Authority as per Rule 136 of the CGST Rules 2017 directs the Commissioners of CGST/SGST Haryana to monitor this order under the supervision of the DGAP by ensuring that the amount profiteered by the Respondent as ordered by the Authority is passed on to all the buyers . A report in compliance of this order shall be submitted to this Authority by the DGAP within a period of 3 months from the date of receipt of this order.

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



Certified copy


(A.K. Goel)
Secretary, NAA

Sd/-
(B. N. Sharma)
Chairman

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

Sd/-
(Amand Shah)
Technical Member

F. No. 22011/NAA/43/S3 Buildwell/2019
Copy To:-

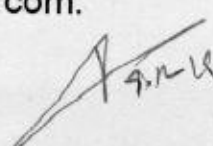
Date: 09.12.2019

1. Directorate General of Anti-Profiteering, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, New Delhi-110001.
2. M/s S3 Buildwell LLP, 109, Choudhary Complex, 9, Veer Savarkar Block, Shakarpur, Laxmi Nagar, Delhi-110092.
3. The Commissioner of State Tax, Vanijya Bhavan, Plot No. 1-3, Sector-5, Panchkula, Haryana- 134151.

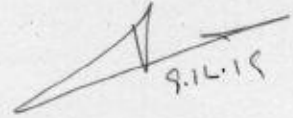
4. The Commissioner, CGST Faridabad, GST Bhavan, New C.G.O. Complex, N.H. 4, Faridabad, Haryana-121001.
5. Principal Secretary to Govt. of Haryana, Town & Country Planning Department, Plot No. 3, Sec-18A, Madhya Marg, Chandigarh-160018.
6. Sh. Pawan Kumar, sonuitv@gmail.com.
7. Sh. Anil Kumar, anilrana155@gmail.com.
8. Sh. BL Sharma, bls261@gmail.com.
9. Sh. Varun Thakur, varun.thakur121@gmail.com.
10. Ms. Sutirtha Chakraborty, sutirtha_ee@rediffmail.com.
11. Sh. Rakesh Bhargava, smartkids2004@yahoo.com.
12. Sh. Satpal Verma, satpalverma@gmail.com.
13. Sh. Raman Jeet Singh, ramanjeet1980@gmail.com.
14. Sh. Jayant Verma, jay.verma27@gmail.com.
15. Sh. Mohit Kumar Chauhan, mohit.chauhan2673@gmail.com.
16. Sh. Kuldeep Singh, k.chitkara62@yahoo.com.
17. Ms. Shubhra Kochar, geetakochar19@gmail.com.
18. Sh. Dinesh Kumar, kumardinesh1611@gmail.com.
19. Sh. Deepak Chawla, deepak.chawla75@gmail.com.
20. Sh. Bhaskar Kol, kol.bhaskar@gmail.com.
21. Ms. Mishika Kochar, romikochar@gmail.com.
22. Ms. Raj Kumari, amitvmehndiratta@gmail.com.
23. Sh. Puran Lal, puran2010tanwar@gmail.com.
24. Sh. Sanjay Singh Rawat, sanjayr084@gmail.com.
25. Ms. Rajni Nagar, nars0024@gmail.com.
26. Ms. Sandhya Patro, jaykrp@yahoo.com.
27. Ms. Neha Singhal, mailvineet24@gmail.com.
28. Sh. Jitender Kumar, jitenderkrbhorla@gmail.com.
29. Sh. Neeraj Kumar, er.neerajkr@gmail.com.
30. Ms. Mukta Taneja, vaibhavganeja8@gmail.com.
31. Sh. Rajneesh Jain, rajnrkt@gmail.com.
32. Sh. Lalit Mohan Parashar, Imparashar@gmail.com.
33. Sh. Bhasker Pandey, bhaskermini@gmail.com.
34. Sh. Jitendra Hariramani, jitu@hotmail.com.



35. Ms. Archana Khanna, archana-khanna@hotmail.com.
36. Mr. Asif Khan/Ms. Shahjahan, anshusai070@gmail.com.
37. Sh. R Bisht, bisht.roshan@hotmail.com.
38. Sh. Nitin Gupta, canitingupta@yahoo.co.in.
39. Sh. Sailesh Dikshit, saileshkumardixit@gmail.com.
40. Sh. Aman Sandhu, sandhu.aman2006@gmail.com.
41. Sh. Bhuwan Chandra, Bhuwan.chandra@hotmail.com.
42. Sh. Deepak Kaul, Kaul.deepak1@gmail.com.
43. Sh. Sarika Jindal, Sarikajindal01@gmail.com.
44. Ms. Ashmeet Nanda, ashmeetnanda@gmail.com.
45. Ms. Prashant Kumari, t.kumari@havells.com.
46. Mrs. Jyoti Kedia, Jyoti.kedia76@gmail.com.
47. Sh. Prem Kumar Dubey, premkrdubey@rediffmail.com.
48. Sh. Ankush Raghav, Ankushraghav09@gmail.com.
49. Sh. Hemant Kumar on behalf of Ms. Geeta Devi,
Hemant0128@yahoo.in.
50. Sh. Shyam Kumar, Kumarshyam1989@gmail.com.
51. Sh. Dinesh Trivedi, dinesh.trivedi87@gmail.com.
52. Sh. Mohit Gupta, mohitgupta@gmail.com.
53. Sh. Sawan Chopra, chopra.sawan303@gmail.com.
54. Sh. Akhil Kumar, akhil.kumar1@yahoo.in.
55. Sh. Sandeep Awasthi, sandeep20april@gmail.com.
56. Sh. Himanshu Jain, himanshujain.inc@gmail.com.
57. Sh. Naveen Jain, jain.naveen34@gmail.com.
58. Sh. Gaurav Sharma, gauravsharma2991@gmail.com.
59. Ms. Shipra Grover, shipragrover04@gmail.com.
60. Sh. Bhagat Singh, bablukumar2008@gmail.com.
61. Sh. Romil Mishra, romil.mishra90@gmail.com.
62. Ms. Kamini Khanduja, kaminikhanduja54@gmail.com.
63. Ms. Kamini Pandey, kaminipndy@gmail.com.
64. Sh. Bhupendra Singh bhupendr2new@gmail.com.
65. Sh. Pawan Singh, pawankumarsingh3500@googlemail.com.
66. Sh. Tarun Aggarwal, tarun.aggarwal1981@gmail.com.
67. Sh. Mukesh Jha, mukeshjha.stpl@gmail.com.



68. Sh. Kishor Sharma, kkrissh25@gmail.com
69. Sh. Pradeep Singh, singh_pradeep1710@yahoo.com.
70. Sh. Ritesh Kumar, Ritesh98765@live.com.
71. Sh. Deepak Bisla, deepakbisla@gmail.com.
72. Sh. Hem Vats, Hemvats6915@gmail.com.
73. Sh. Ritesh Yadav, Ritesh_eye@rediffmail.com.
74. Sh. Balvinder Singh, Balvinder.s.ratan@gmail.com.
75. Sh. Sukhbir Singh, Sukhvirsingh271991@gmail.com.
76. Sh. Kuldeep Kumar, Pandey, Kuldeep.85pndy@gmail.com.
77. NAA Website
78. Guard File



(A.K. Goel)
Secretary, NAA