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

Case No.	35/2020
Date of Institution	27.12.2019
Date of Order	26.06.2020

In the matter of:

1. Smt. Honey Macker, B-1/29, Sector-G, Aliganj, Lucknow, UP.
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 Pivotal Infrastructure Pvt Ltd., 309, 3rd Floor, JMD Pacific Square, Sector -15, Part –II, Gurgaon -122001.

Respondent

Quorum:-

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

Present:-

1. None for the Applicants.
2. None for the Respondent.

ORDER

1. The present Report dated 27.12.2019 has been received from the Applicant No. 2 i.e. the Director General of Anti-Profiteering (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 vide her application dated 03.08.2018 filed before the Standing Committee on Anti-profiteering under Rule 128 of the CGST Rules, 2017, the Applicant No. 1 had alleged profiteering by the Respondent in respect of purchase of Flat in the "Devaan" project of the Respondent situated at Sector-84, Gurgaon- 122001. The above Applicant had also alleged that the Respondent had not passed on the benefit of Input Tax Credit (ITC) availed by him by way of commensurate reduction in the price of the above flat. The aforesaid reference was considered by the Standing Committee on Anti-

profiteering, in its meeting held on 15th May, 2019, wherein it was decided to forward the same to the DGAP to conduct detailed investigation in to the complaint according to Rule 129 (1) of the CGST Rules, 2017.

2. On receipt of the recommendation from the Standing Committee on Anti-profiteering, the DGAP had issued Notice dated 08.07.2019 under Rule 129 (3) of the above Rules, asking the Respondent to intimate as to whether he admitted that the benefit of ITC had not been passed on to the above Applicant by way of commensurate reduction in the price of the flat and in case it was so to suo-moto compute the quantum of the same and mention it in his reply to the Notice along with the supporting documents. The Respondent was given opportunity to inspect the non-confidential evidence/information furnished by the Applicant No. 1 during the period between 15.07.2019 to 17.07.2019 in accordance with Rule 129 (5) of the above Rules but the Respondent did not avail of the said opportunity. Vide e-mail dated 27.11.2019, the above Applicant was also given opportunity to inspect the non-confidential documents/reply submitted by the Respondent on 02.12.2019 or 03.12.2019. However, the above Applicant did not avail of the said opportunity.

3. The DGAP has covered the period from 01.07.2017 to 30.06.2019 during the current investigation.

4. The DGAP has stated that the Respondent had submitted replies vide his letters/emails dated 19.07.2019, 25.07.2019, 24.08.2019, 11.10.2019, 14.10.2019, 16.10.2019 and 21.11.2019. The

submissions of the Respondent were summed up by the DGAP as in mentioned in the subsequent Paras.

5. The Respondent had stated before the DGAP that the allegation of non-passing of GST benefit to the Applicant No. 1 had was void ab initio because he had informed the above Applicant over telephone and through e-mail regarding passing on the benefit of GST input tax credit and he had already passed on GST benefit of Rs. 23,575/- inclusive of GST to the above Applicant in the month of March-2019. The Respondent had further submitted that he had already passed on ITC benefit to all the eligible home buyers.

6. The Respondent had also submitted the following documents/information to the DGAP vide his above mentioned letters/e-mails during the course of the investigation:-

(a) Copies of GSTR-1 Returns for the period from July, 2017 to June, 2019.

(b) Copies of GSTR-3B Returns for the period from July, 2017 to June, 2019.

(c) Copies of VAT Returns (including all annexures) & ST-3 Returns for the period from April, 2016 to June, 2017.

(d) Copies of all demand letters issued and sale agreement made with the Applicant.

(e) Copies of Balance Sheets for FY 2016-17 and 2017-18.

(f) Copy of Electronic Credit Ledger for the period from 01.07.2017 to 30.06.2019.

(g) CENVAT/Input Tax Credit register for the FY 2016-17 and 2017-18 and 2018-19.

(h) Details of VAT, Service Tax, ITC of VAT, CENVAT Credit for the period from April, 2016 to June, 2017, for the project "Devaan".

(i) List of home buyers in the project "Devaan" alongwith details of benefit passed on.

(j) Copy of Haryana RERA Registration Certificate of the Project "Devaan".

(k) Copy of Tran-1.

7. The DGAP has also submitted that all the documents placed on record were carefully examined by him and he had found that the main issues for determination were whether there was reduction in the rate of tax or benefit of ITC on the supply of construction service by the Respondent after implementation of the GST w.e.f. 01.07.2017 and in case it was so, whether the Respondent had passed on the above benefits to the home buyers as per the provisions of Section 171 of the CGST Act, 2017 or not.

8. The DGAP has further stated that the Respondent vide his letter dated 19.07.2019 had submitted that he had informed the Applicant No. 1 over telephone and through e-mail regarding passing on the benefit of GST input tax credit and he had already passed on GST benefit of Rs. 23,575/- (inclusive of GST) to the Applicant No. 1 in the month of

March-2019. The Respondent had further submitted that he had passed on the ITC benefit to all the eligible home buyers.

9. The Respondent had submitted a copy of RERA Registration Certificate of his Project "Devaan" and the payment schedule for the purchase of flats at the basic sale price of Rs. 4,000/- per square feet for the carpet area and Rs. 500/-per square feet for balcony area. The Respondent, vide letter dated 19.07.2019 and subsequent e-mails, had submitted copies of demand letters issued to the above Applicant. The details of amounts and taxes paid by the Applicant to the Respondent were furnished by the DGAP as is given in Table-A below:-

Table-'A'

(Amount in Rs.)

S. No.	Payment Stage	Due Date	% of BSP	Instalment (Rs.)	Service Tax (Rs.)	VAT (Rs.)	GST (Rs.)	GST Benefit (Rs.)	Total Amount payable (Rs.)
1	At the time of Submission of Application	01.07.2014	5.00%	98,700	3,050				1,01,750
2	Within 15 days of the date of Issuance of Allotment Letter	12.05.2015	20.00%	3,94,800	12,199				4,06,999
3	Within 06 months of the date of Issuance of Allotment Letter	27.10.2015	12.50%	2,46,750	8,636				2,55,386
4	Within 12 months from the date of Issuance of Allotment Letter	27.04.0016	12.50%	2,46,750					2,46,750
5	Within 18 months from the date of Issuance of Allotment Letter	27.10.2016	12.50%	2,46,750					2,46,750
6	Within 24 months from the date of Issuance of Allotment Letter	27.04.2017	12.50%	2,46,750					2,46,750
7	Within 30 months from the date of Issuance of Allotment Letter	27.10.2017	12.50%	2,46,750			29,610		2,76,360
8	Within 36 months from the date of Issuance of Allotment Letter	27.10.2018	12.50%	2,46,750			19,740		2,66,490
9	VAT PAYABLE	30.04.2019				74,025			74,025
Grand Total			100.00%	19,74,000	23,885	74,025	49,350		21,21,260

10. The DGAP has also claimed that para 5 of Schedule-III of the Central Goods and Services Tax Act, 2017, defining activities or transactions

which shall be treated neither as a supply of goods nor a supply of services, reads as "Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building". Further, Clause (b) of para 5 of Schedule II of the Central Goods and Services Tax Act, 2017 reads as "(b) construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier". In the light of these provisions, the DGAP has contended that the ITC pertaining to the units which were under construction but not sold was provisional ITC that would be required to be reversed by the Respondent, if such units would remain unsold at the time of issue of Completion Certificate, in terms of Section 17 (2) & Section 17 (3) of the Central Goods and Services Tax Act, 2017 which read as under:-

> 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.

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

Therefore, the DGAP has claimed that the ITC pertaining to the unsold units was outside the scope of this investigation and the Respondent was required to recalibrate the selling price of such units to be sold to the prospective buyers by considering the net benefit of additional ITC available to him post-GST.

11. The DGAP has further claimed that prior to 01.07.2017 i.e. before the GST was introduced, 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) and thus the Respondent was 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 (CENVAT credit of Central Excise Duty was not available) in respect of the commercial shops sold by him. The Respondent was also eligible to avail input tax credit

of VAT paid on the inputs. Further, post-GST, the Respondent could avail input tax credit of GST paid on all the inputs and input services. From the data submitted by the Respondent covering the period from April, 2016 to June, 2019 the details of the input tax credit availed by him, his turnover from the project "Devaan", the ratio of input tax credit to turnover, during the pre-GST (April, 2016 to June, 2017) and post-the GST (July, 2017 to June, 2019) periods has been furnished by the DGAP as per the Table-B given below:-

Table-'B' (Amount in Rs.)

Sr. No.	Particulars	Total (Pre-GST) April, 2016 to June, 2017	Taxable Turnover @ 12% GST (01.07.2017 to 24.01.2018) for flats & (01.07.2017 to 30.06.2019) for Commercial shops	Taxable Turnover @ 8% GST for flats (25.01.2018 to 30.06.2019)	Total (Post-GST)
1	CENVAT of Service Tax Paid on Input Services used for Commercial Shops (A)	27,11,667	-	-	-
2	Input Tax Credit of VAT Paid on Purchase of Inputs (B)	46,68,530	-	-	-
3	Total CENVAT/Input Tax Credit Available (C)= (A+B)	73,80,197	-	-	-
4	Input Tax Credit of GST Availed (D)	-	1,74,57,223	3,33,89,872	5,08,47,095
5	Turnover for Residential Flats as per Home Buyers List (E)	58,05,36,000	-	-	-
6	Turnover for Commercial Shops as per Home Buyers List (F)	4,50,45,463	-	-	-
7	Total Turnover (G)= (E)+(F)	62,55,81,463	22,06,62,493	19,35,12,000	41,41,74,493
8	Total Saleable Carpet Area (Excluding Balcony Area*) (in SQF) (H)	4,04,445	3,76,424 (Residential)	28,021 (Commercial)	4,04,445
9	Total Sold Carpet Area (Excluding Balcony Area*) (in SQF) relevant to turnover (I)	3,88,602	3,76,424 (Residential)	9,765(Commercial)	3,86,189
10	Relevant ITC [(J)= (C)*(I)/(H)] or [(J)= (D)*(I)/(H)]	70,91,098			4,85,51,939
Ratio of Input Tax Credit Post-GST [(K)=(J)/(G)]		**1.13%**			**11.72%**

12. The DGAP has also submitted from the Table-'B' that the ITC as a percentage of the total turnover that was available to the Respondent

during the pre-GST period (April, 2016 to June, 2017) was 1.13% and during the post-GST period (July, 2017 to June, 2019), it was 11.72% which clearly confirmed that post-GST, the Respondent has been benefited from additional ITC to the tune of 10.59% [11.72% (-) 1.13%] of the turnover.

13. The DGAP has further submitted that the Central Government, on the recommendation of the GST Council, had levied 18% GST (effective rate was 12% in view of 1/3rd abatement for land value) on construction service, vide Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017. The effective GST rate 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 issue of profiteering has been examined in two parts, i.e. by comparing the applicable tax rate and input tax credit available in the pre-GST period (April, 2016 to June, 2017) when only VAT@ 4.50% was payable for Residential flats and Commercial shops and Service Tax @4.50% on Commercial Shops only with (1) the post-GST period from 01.07.2017 to 24.01.2018, when the effective GST rate was 12% for both the residential flats and the commercial shops and (2) with the GST period from 25.01.2018 to 30.06.2019, when the effective GST rate was 12% for commercial shops and 8% for residential flats. Accordingly, on the basis the figures contained in Table- 'B' above, the comparative figures of the ratio of input tax credit availed/available to the turnover in

the pre-GST and post-GST periods as well as the turnover, the recalibrated base price and the excess realization (profiteering) during the post-GST period, has been tabulated by the DGAP as is given in the Table-C below:-

Table-'C' (Amount in Rs.)

Sr. No.	Particulars		Post- GST Period			
1	Period	A	01.07.2017 to 30.06.2019 (Shops)	01.07.2017 to 24.01.2018 (Flats)	25.01.2018 to 30.06.2019 (Flats)	Total
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	11.72%	11.72%	11.72%	11.72%
4	Increase in input tax credit availed post-GST (%)	D= 11.72% less 1.13%	10.59	10.59	10.59	10.59
5	Analysis of Increase in input tax credit:					
6	Base Price raised during July, 2017 to June, 2019 (Rs.)	E	2,71,50,493	19,35,12,000	19,35,12,000	41,41,74,493
7	GST raised over Base Price (Rs.)	F= E*B	32,58,059	2,32,21,440	1,54,80,960	4,19,60,459
8	Total Demand raised	G=E+F	3,04,08,552	21,67,33,440	20,89,92,960	45,61,34,952
9	Recalibrated Base Price	H= E*(1-D) or 89.41% of E	2,42,75,256	17,30,19,079	17,30,19,079	37,03,13,414
10	GST @12% or 8%	I = H* B	29,13,031	2,07,62,290	1,38,41,526	3,75,16,847
11	Commensurate demand price	J = H+I	2,71,88,286	19,37,81,369	18,68,60,606	40,78,30,261
12	Excess Collection of Demand or Profiteering Amount	K= G–J	32,20,266	2,29,52,071	2,21,32,354	4,83,04,691

14. The DGAP has also observed from Table-'C' that the additional ITC of 10.59% of the turnover should have resulted in commensurate reduction in the base prices as well as cum-tax prices. Therefore, in terms of Section 171 of the Central Goods and Services Tax Act, 2017, the benefit of the additional ITC was required to be passed on to the recipients.

15. On the basis of the aforesaid CENVAT/ITC availability pre and post-GST and the details of the amount collected by the Respondent from the Applicant and the other home buyers during the period from 01.07.2017 to 24.01.2018, the amount of benefit of ITC not passed on or in other words, the profiteered amount has been quantified by the DGAP as Rs. 2,29,52,071/- for residential units which included GST @ 12%, on the base profited amount of Rs. 2,04,92,921/-. Further, the amount of benefit of input tax credit that needed to be passed on by the Respondent to the home buyers during the period from 25.01.2018 to 30.06.2019 has been computed as Rs. 2,21,32,354/-which included 8% GST on the base amount of Rs. 2,04,92,921/-. In respect of the commercial shops sold by the Respondent during the period from 01.07.2017 to 30.06.2019, the benefit of input tax credit that needed to be passed on by the Respondent to the buyers of commercial shops came to Rs. 32,20,266/- which included 12% GST on the base amount of Rs. 28,75,237/-. Therefore, the total benefit of input tax credit that the Respondent was required to pass on during the period from 01.07.2017 to 31.03.2019 in respect of both the residential flats as well as the commercial shops, came to Rs.4,83,04,691/- which included GST (@ 12% or 8%) on the base amount of Rs. 4,38,61,079/-. The home and commercial shop buyer and unit no. wise break-up of this amount has been given in Annexure-13 of the DGAP Report. This amount was inclusive of the profiteered amount in respect of the Applicant No. 1. It was also observed that the Respondent had supplied the construction services in the State of Haryana only.

16. The DGAP has further contended that the Respondent had submitted that he had passed on benefit of Rs 1,85,25,586/- to the home buyers. A summary of category-wise input tax credit benefit required to be passed on and the benefit claimed to have been passed on by the Respondent, has been furnished by the DGAP as is given in Table- D below:-

Table-D (Amount in Rs)

Sr. No.	Category of Customers	No. of Units	Area (in Sqf)	Amount Received Post GST	Profiteering Amt. as per Annex-13	Benefit already Passed on by the Noticee	Difference	Remark
A	B	C	D	E	F	G	H=F-G	I
1	Applicant (Residential)	1	481	5,42,850	57,488	23,757	33,731	Further Benefit to be passed on as per Annex-14
2	Other Buyers (Residential)	844	3,74,923	42,40,20,300	4,49,03,750	1,74,27,965	2,74,75,785	Further Benefit to be passed on as per Annex-14
3	Other Buyers (Residential)	3	1,020	11,63,250	1,23,188	1,36,216	-13,028	Excess Benefit passed on. List Attached as Annex-15
	Total Residential (A)	**848**	**3,76,424**	**42,57,26,400**	**4,50,84,426**	**1,75,87,938**	-	
4	Commercial Shop Buyers	39	9,765	2,71,50,493	32,20,266	9,37,648	22,82,618	Further Benefit to be pass on as per Annex-16
5	Commercial Shop Buyers	37	8,138	-	-	-	-	No Consideration Paid Post-GST. No benefit passed on.
6	Commercial Shop Buyers	36	10,118	-	-	-	-	Unsold as on 30.06.2019
7	Total Commercial (B)	**112**	**28,021**	**2,71,50,493**	**32,20,266**	**9,37,648**	**22,82,618**	
	Grand Total (C)=(A)+(B)	**960**	**4,04,445**	**45,28,76,893**	**4,83,04,692**	**1,85,25,586**	-	

17. The DGAP has observed from the above Table-D that the benefit already passed on by the Respondent was less than what he ought to have passed on in case of 844 residential flats (Sr. 2 of Table-D), by an amount of Rs. 2,74,75,785/- and in case of 39 commercial shops (Sr. 4 of Table-D), by an amount of Rs. 22,82,618/-. The details of these amounts have been given in Annex-14 & Annex-16 respectively of the DGAP's Report. Further, the DGAP has reported that the benefit

already passed on by the Respondent was higher than what he should have passed on, in respect of 3 residential flats (Sr. 4 of Table-D), by an amount of Rs. 13,028/-. However, this excess benefit already passed on to some recipients, could not be set off against the additional benefit required to be passed on to some other recipient as per Annex-14 & Annex-16 and it could only be adjusted against any future benefit that might accrue to such recipient who have received excess benefit. For verification of benefit already passed on by the Respondent, the DGAP had called for the credit notes and payment ledger of the home buyers mentioned at Sr. No. 1 to 50, 201 to 250, 401 to 450 and 601 to 650 of the home buyers list. The credit notes and payment ledger were duly verified by the DGAP with the details submitted by the Respondent.

18. The DGAP has further mentioned that the above computation of profiteering was with respect to 848 home buyers and 112 commercial shop buyers, whereas the Respondent had booked 848 residential units and 76 commercial shops till 30.06.2019. Out of the 76 commercial shops booked till 30.06.2019, in respect of 37 shops, though the booking amount was received in the pre-GST period, no consideration had been received during the post-GST period of 01.07.2017 to 30.06.2019 (period covered by the investigation). Therefore, if the input tax credit in respect of these 37 commercial shops was considered to calculate the profiteering in respect of 887 units (848 residential flats + 39 commercial shops) where payments had been received after GST, the input tax credit as a percentage of

turnover would be distorted and erroneous. Therefore, the benefit of input tax credit in respect of these 37 commercial shops should be calculated when the consideration would be received in the post-GST period by taking into account the proportionate input tax credit in respect of those 37 commercial shops.

19. The DGAP has also claimed that the benefit of additional ITC of 10.59% of the turnover has, in fact, accrued to the Respondent and the same was required to be passed on to the Applicant and other recipients. The DGAP has stated from the Table-D that the Respondent has not passed on the additional benefit of Input Tax Credit @10.59% of the Base Price to (i) One flat of Applicant at Sr. No. 1 of Table-D involving amount of Rs. 33,731/-. (ii) 844 residential flats at Sr. 2 of Table-D involving amount of Rs. 2,74,75,785/- and (iii) 39 Commercial shops at Sr. No. 4 of Table-D involving amount of Rs. 22,82,618/-.The DGAP has further stated that the benefit already passed on by the Respondent to the buyers in column-G of Table-D has already been factored in the calculations and it was found that Section 171 of the Central Goods and Services Tax Act, 2017 appeared to have been contravened by the Respondent, inasmuch as the additional benefit of input tax credit @10.59% of the base price i.e. Rs. 2,97,92,134/- received by the Respondent during the period from 01.07.2017 to 30.06.2019, had not been passed on by the Respondent to 884 recipients (845 buyers of residential flats plus 39 buyers of commercial shops). 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. Therefore, this additional amount of Rs. 2,97,92,134/- was required to be returned to such eligible recipients.

20. The DGAP has also stated that the present investigation has covered the period from 01.07.2017 to 30.06.2019. Profiteering, if any, for the period post June, 2019, has 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 this stage, when the construction of the project was yet to be completed. He has further stated that the provisions of Section 171 (1) of the Central Goods and Services Tax Act, 2017 requiring that "a 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", have been contravened by the Respondent in the present case.

21. The above Report was considered by this Authority in its meeting held on 31.12.2019 and it was decided that the Applicants and the Respondent be asked to appear before this Authority on 21.01.2020. The Respondent was issued notice on 31.12.2019 to explain why the above Report of the DGAP should not be accepted and his liability for violating the provisions of Section 171 of the CGST Act, 2017 should not be fixed. During the course of the hearings no one appeared for both the parties. Instead, the Respondent has filed written submissions dated 04.02.2020 which state as follows:-

a) That as per Section 171 of the CGST Act profiteering amount needed to be passed on to the customers and he had communicated to his customers that he would pass the actual credit to all the customers. However, due to newly implemented law and frequent changes at the initial stage he was unable to determine exact amount to be passed on to the customers and to avoid delay he had passed on an interim amount to the customers in the month of March 2019 through Credit notes.

b) That he has already submitted the following documents/ information to the DGAP's office:-

i. Copies of GSTR-1 Returns for the period from July, 2017 to June, 2019.
ii. Copies of GSTR-3B Returns for the period from July, 2017 to June, 2019.
iii. Copies of VAT Returns and Service Tax Returns for the period from April, 2016 to June, 2017.
iv. Copies of Financial Statements for FY 2016-17 and FY 2017-18.
v. Copy of Electronic Credit Ledger for the period from 01.07.2017 to 30.06.2019
vi. Copy of CENVAT Credit Register, ITC register.
vii. List of Home Buyers along with the ITC benefit Passed.
viii. Copies of Ledgers of customers
ix. Copy of TRAN-1.

c) That he has submitted the following information/ documents to this Authority during the hearings in respect of the other projects of the Respondent:-

1. Statement showing project-wise ITC/Cenvat credit availed and Turnover as per the Statutory Return (GST/ST/VAT Returns) for the period from 01.04.2016 to 30.06.2019:-

   (i) Turnover Summary and CENVAT Summary for 2016-17.

   (ii) Turnover Summary and CENVAT Summary for the period from April-2017 to June-2017.

   (iii) Turnover Summary and ITC summary for the period from July-2017 to March-2018.

   (iv) Turnover Summary and ITC Summary for the period from April-2018 to March-2019.

2. Project-wise list of all payments received from each of his buyers.
3. Balance Sheets for the year 2016-17, 2017-18 along with the Project-wise Trial Balance for the same period.
4. Summary of the Total number of apartment/flats/ commercial units/ residential units in the Project with total area of each flat.
5. Status of the project in terms of sold and unsold units as on 30.06.2019.

d) That the interim ITC benefit has been passed on by him to the customers by way of credit notes and the same has been adjusted against their Liabilities/ dues towards the flats/shops, letters in this respect had been sent to the customers and reduced payments were being received from the customers. This fact has been duly verified by the DGAP during the investigation and also mentioned in his Investigation Report. The Respondent has also submitted summary of the 'ITC benefit required to be passed on' and 'the benefit already passed on by him' as below:-

ITC benefit Passed under Project "Devaan" Sector-84

(Figures in Lacs)

Period	ITC benefit to be passed	ITC passed in March-2019
ITC benefit to be passed to the customers as per DGAP report	483.04	
Credit Passed to Residential Unit Customers		175.88
Credit Passed to Commercial Unit Customers		9.37
TOTAL	**483.04**	**185.25**

e) That he didn't want any hearing and would ensure that the remaining benefit of ITC was passed on to his customers on the basis of the Order issued by this Authority and he would also pass on the ITC benefit which might arise in the future on the basis of the Investigation Report.

22. We have carefully considered all the submissions filed by the Applicants, the Respondent and the other material placed on record and find that the Applicant No. 1 vide her complaint dated 03.08.2018 had alleged that the Respondent was not passing on the benefit of ITC to her in spite of the fact that he was availing ITC on the purchase of the inputs at the higher rates of GST which had resulted in benefit of additional ITC to him and was also charging GST from her @12%. This complaint was examined by the Standing Committee in its meeting held on 15.05.2019 and was forwarded to the DGAP for investigation, who vide his Report dated 27.12.2019 has found that the ITC as a percentage of the total turnover which was available to the Respondent during the pre-GST period was 11.72% and during the post-GST period this ratio was 1.13% as per the Table-B mentioned above and therefore, the Respondent has benefited from the additional ITC to the tune of 10.59% (11.72% - 1.13%) of the total turnover which he was required to pass on to the flat buyers of this project. The DGAP has also found that the Respondent has not reduced the basic prices of his flats/shops by 10.59% due to additional benefit of ITC and by charging GST at the increased rate of 12% on the pre-GST basic prices, he has contravened the provisions of Section 171 of the CGST Act, 2017. The DGAP has further submitted that the amount of benefit of ITC which has not been passed on by the Respondent or the profiteered amount came to Rs. 4,83,04,692/- which included 12% or 8% GST on the basic profiteered amount. The DGAP has also intimated that this amount of profiteering also included the profiteered amount of Rs. 57,488/- including 12% or 8% GST in respect of the

Applicant No. 1. He has also supplied the details of all the buyers who have purchased flats/shops from the Respondent along with their unit numbers and the profiteered amount vide Annexures 14, 15 and 16 attached with the Report.

23. It is also revealed from the record that the Respondent has not raised any objection against the methodology adopted by the DGAP while arriving at the quantum of profiteered amount. The above methodology has also been approved by this Authority in respect of all the cases in which the benefit of ITC is required to be passed on in the real estate projects. Accordingly, the above methodology is held to be appropriate, justifiable, reasonable and in consonance with the provisions of Section 171 of the CGST Act, 2017 and hence, the same can be relied upon while determining the amount of profiteering.

24. It is established from the perusal of Table-C supra that on the basis of the CENVAT/input tax credit availability pre and post-GST and the details of the amount collected by the Respondent from the Applicant No. 1 and the other home/shop buyers during the period from 01.07.2017 to 24.01.2018, the amount of benefit of input tax credit that needed to be passed on by the Respondent to the recipients came to Rs. 2,29,52,071/- for the residential flats, which includes 12% GST on the base profiteered amount of Rs. 2,04,92,921/-. Further, the amount of benefit of input tax credit that needed to be passed on by the Respondent to the home buyers during the period from 25.01.2018 to 30.06.2019, came to Rs. 2,21,32,354/- which includes 8% GST on the base profiteered amount of Rs. 2,04,92,921/-. In respect of the commercial shops sold by the Respondent during the period from

01.07.2017 to 30.06.2019, the benefit of input tax credit that was required to be passed on by the Respondent to these buyers of the commercial shops amounts to Rs. 32,20,266/- which includes 12% GST on the base profiteered amount of Rs. 28,75,237/-. Therefore, the total benefit of input tax credit for the period from 01.07.2017 to 30.06.2019 in respect of both residential flats and the commercial shops is determined as **Rs. 4,83,04,691/-** which includes GST (@ 12% or 8%) on the base profiteered amount of Rs. 4,38,61,079/- in terms of Rule 133 (1) of the CGST Rules, 2017. The home and commercial shop buyer's names and unit no. wise break-up of this amount has been given by the DGAP in **Annexure-13** of the Report dated 27.12.2019. The profiteered amount is determined as **Rs. 57,488/-** inclusive of the GST as per Annexure-13 in respect of the Applicant No. 1.

25. It is also evident from the Report of the DGAP that the Respondent had claimed that he has passed on benefit of Rs. 1,85,25,586/- to the home/shop buyers against the profiteered amount of Rs. 4,83,04, 692/-. Details of the category-wise input tax credit benefit required to be passed on and the benefit claimed to have been passed on by the Respondent have been given by the DGAP in Table-'D' supra. The DGAP has specifically admitted in his Report that for verification of the benefit already passed on by the Respondent he had summoned the credit notes and the payment ledger of the home buyers mentioned at Sr. No. 1 to 50, 201 to 250, 401 to 450 and 601 to 650 of the home buyers list which have been duly verified by him with the details submitted by the Respondent and found to be correct. In view of the

above statement of the DGAP the Respondent is directed to return the ITC benefit of Rs. 33,731/- including the GST to the Applicant No. 1, Rs. 2,74,75,785/- including the GST to the 844 other flat buyers as per the details given in Annexure-14 and Rs. 22,82,618/- including the GST to the 39 commercial shop buyers mentioned in Annexure-16 as per the provisions of Rule 133 (3) (c) of the above Rules along with the interest @ 18% to be charged from the date when the above amounts were collected by the Respondent from the flat/shop buyers as all these buyers are identifiable as per the details furnished by the Respondent. However, the Respondent shall not adjust the excess amount which he has passed on to the 3 residential buyers as has been mentioned in Annexure-15 of the Report against the ITC benefit which is due to the buyers mentioned in Anexure-14 or 16 of the Report.

26. 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/shops commensurate with the benefit of ITC received by him as has been detailed above. Since the present investigation is only up to 30.06.2019 the DGAP is directed to further investigate the quantum of ITC benefit under Rule 133 (4) of the above Rules which the Respondent is required to pass on to the home/shop buyers w.e.f. 01.07.2019 till 30.06.2020 or till the Completion Certificate is obtained by the Respondent whichever is earlier as the project is still under execution and submit his report as per the provisions of Rule 129 (6) of the above Rules.

27. It is also evident from the above narration of the facts that the Respondent has denied benefit of ITC to the buyers of the flats being constructed by him in his above project in contravention of the provisions of Section 171 (1) of the CGST Act, 2017 and has thus resorted to profiteering. Hence, he has committed an offence under Section 171 (3A) of the CGST Act, 2017 and therefore, he is apparently 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 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.

28. 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 all these amounts and interest is paid by the Respondent to the recipients 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 as per the provisions of Rule 136 of the CGST Rules, 2017, under the supervision of the DGAP and paid to the flat/shop buyers as per their entitlement. A detailed Report confirming the action taken on the directions passed vide this order shall be submitted by the concerned Commissioner CGST/SGST within a period of 4 months from the date of this order.

29. A copy each of this order be supplied to both the Applicants, the Respondent and the Commissioners CGST/SGST, Haryana for necessary action. File be consigned after completion.

Sd/-
(Dr. B. N. Sharma)
Chairman

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

Sd/-
(Amand Shah)
Technical Member

Certified Copy

(A. K. Goel)
NAA, Secretary

F. No. 22011/NAA/117/Pivotal-3/2019 / 3535 – 3540 Date: 26.06.2020

Copy To:-

1. M/s Pivotal Infrastructure Pvt Ltd., 309, 3rd Floor, JMD Pacific Square, Sector -15, Part –II, Gurgaon -122001.
2. Smt. Naina Rani, T4/1204, Taksila Heights, Sector-37C, Opp. Sector-10, Near Basai Chowk, Gurgaon-122001.Director General Anti-Profiteering, Central Board of Indirect Taxes & Customs, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.
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. Guard File/NAA Website.

O/C