

BEFORE THE NATIONAL ANTI-PROFITEERING AUTHORITY UNDER

THE CENTRAL GOODS & SERVICES TAX ACT, 2017

Case No.	7/2018
Date of Institution	28.08.2018
Date of Order	18.09.2018

In the matter of:

1. Shri Sukhbir Rohilla along with 108 other Applicants.
2. Director General Anti-Profiteering, Indirect Taxes & Customs, 2nd Floor, Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.

Applicants

Versus

M/s Pyramid Infratech Pvt. Ltd., 217A-217B, 2nd Floor, Sun City Business Tower, Sector – 54, Golf Course Road, Gurugram – 122 002, Haryana.

Respondent

Quorum:-

1. Sh. B. N. Sharma, Chairman
2. Sh. J. C. Chauhan, Technical Member
3. Ms. R. Bhagyadevi, Technical Member

Present:-

1. S/Shri S. K. Jain, Shri Bharat Bhushan and 12 others on behalf of Applicant No. 1.
2. S/Sh. Akshat Aggarwal Assistant Commissioner and Sh. Bhupender Goyal Assistant Director (Costs) for the Applicant No. 2.
3. Shri Dinesh Sharma Managing Director and Shri J. P. Gaur Chief Finance Officer on behalf of the Respondent.

ORDER

1. The brief facts of the this case are that Under Rule 128 of the Central Goods and Service Tax (CGST) Rules, 2017, 36 applications were filed before the Haryana State Screening Committee alleging that the benefit of Input Tax Credit (ITC) had not been passed on to the Applicants in respect of the construction service supplied by the Respondent. The Applicants are:-

S.No.	S/Sh.	Email ID
1	Sukhbir Rohilla*	sukhbirrohilla001@gmail.com
2	Himanshu Sethi*	winiscertain@gmail.com
3	Rajender Kumar*	rajender.kumar20865@gmail.com
4	Deepak Kumar*	fialok.deepak@gmail.com
5	Gaurav Rohilla, Nitesh Rohilla, Surender Rohilla*	sukhbirrohilla001@gmail.com
6	Razia	Hamind17@gmail.com
7	Aarek Mehrotra*	smarty.aarekh@gmail.com
8	Neeraj Dale*	neeraj.dale@gmail.com
9	Kuldeep Maan	kuldeepmaan007@gmail.com
10	Alok Tyagi*	aloktyagi53@gmail.com
11	Mayank Saxena	mail.msaxena@gmail.com
12	Yogesh Upadhyay	yogeshdus@gmail.com
13	Parteek Sharma*	prateek.psharma@gmail.com
14	Kamal Valecha*	kamal_valecha0211@yahoo.co.in
15	Narottam Singh*	nrttm_singh@yahoo.co.in
16	Rahul Kapoor*	rkapoor_87@rediffmail.com
17	Vinod Khanduja*	vinoddhiraj@gamil.com
18	Pradeep Jangra*	pradeepjangra87@gmail.com
19	Amarjeet Kumar*	ca.amarjeet@gmail.com
20	Badri Narayan Meena*	ritesbn@gmail.com
21	Harsh Awasthi	hawasthi@gmail.com
22	Saurav Kumar Aggarwal*	lavi22oct@gmail.com

23	Ravi Verma	ravics136@gmail.com
24	Sanjeev Chadha*	sanjeev_chadha35@yahoo.co.in
25	Sangam Shukla	er.sangam@gmail.com
26	Udayan Kishore Mishra*	udayankishoremishra@gmail.com
27	Manoj Jangraa	mj.jangraa@gmail.com
28	Ravi Yadav	dear.raviyadav@gmail.com
29	Zeeshan Ali Quazi*	er.zeeshan99@gmail.com
30	Sunil Kumar Jha*	lakshya.skjha@yahoo.com
31	Vikash Gupta*	vikash.gupta7878@gmail.com
32	Anoop Kumar	anoop_0406@yahoo.com
33	Rajesh Kumar*	rajeshkumar.cs06@gmail.com
34	Vikash Garg*	sperry.it@gmail.com
35	Jofin Mathew	jofinmathew@gmail.com
36	Bharat Bhushan Badesra*	bbbadesra@gmail.com

*Applicants who have filed more than one application:-

2. The above Applicants had booked flats with the Respondent under the Haryana Affordable Housing Policy 2013 (here-in-after referred to as the Policy), notified by the State of Haryana vide Notification No. PF-27/48921 dated 19.08.2013. They had alleged that before coming in to force of the CGST Act, 2017 w.e.f. 01.07.2017, Excise Duty and Value Added Tax (VAT) were being collected from them as Service Tax was exempted, however, after the implementation of the above Act, 12% Goods & Services Tax (GST) was levied on the construction service in place of Excise Duty and VAT w.e.f. 01.07.2017, which was further reduced to 8% w.e.f. 25.01.2018 but the benefit of Input Tax Credit (ITC) which was available to the Respondent and which was much more than the output tax liability of the Respondent had not been passed on to them and therefore the Applicants should not have been burdened with the entire GST of 12% or 8%. They had further alleged that the Respondent had not agreed with the contention of the Applicants that the Respondent was charging 12% and 8% GST and was simultaneously also enjoying the benefit of ITC and was not giving the benefit of the ITC, had claimed that the Respondent was contravening the provisions of Section 171 of the CGST Act, 2017. Accordingly they had filed several

applications with the Haryana Screening Committee for appropriate redressal of their grievance. These applications were examined by the Screening Committee in its meeting held on 30.10.2017 and it was decided to forward these applications to the Standing Committee on Anti-profiteering for further necessary action. The Standing Committee in its meeting held on 07.11.2017 after confirming that prima facie there was evidence of non-compliance of the provisions of Section 171, had forwarded these applications to the Director General of safeguards (DGSG) now redesignated as Director General of Anti-profiteering(DGAP) for detailed investigation. 102 additional applications against the Respondent were also received by the Standing Committee which were also forwarded to the DGAP for investigation. The following are the names of the additional Applicants who had filed applications with the Standing Committee:-

S.No.	S/Sh.	E-mail ID
1	Rohit Yadav	rohit.yadav@gmail.com
2	Bharat Bhushan*	bbbadesra@gmail.com
3	Deepak Fialok*	fialok.deepak@gmail.com
4	Rajender Kumar*	rajender.kumar20865@gmail.com
5	Sukhbir Rohilla/Surinder Kumar*	sukhbirrohilla001@gmail.com
6	Aarekh Mehrotra*	smarty.aarekh@gmail.com
7	Neeraj Dale*	neeraj.dale@gmail.com
8	Alok Tyagi*	aloktyagi53@gmail.com
9	Kamal Valecha*	kamal_valecha0211@yahoo.co.in
10	Narottam Singh*	nrttm_singh@yahoo.co.in
11	Vinod Khanduja*	vinoddhiraj@gmail.com
12	Amarjeet Kumar*	ca.amarjeet@gmail.com
13	B N Meena*	ritesbn@gmail.com
14	Saurav Kumar Aggarwal*	star_sas2010@yahoo.com
15	Udayan kishore Mishra*	udayankishoremishra@gmail.com
16	Zeeshan Ali Quazi*	er.zeeshan99@gmail.com
17	Sunil Jha*	lakshyaskjha@gmail.com

18	Rajesh Kumar*	rajeshkumar.cs06@gmail.com
19	Vikas Garg*	sperry.it@gmail.com
20	Bharat Bhushan*	bbbadesra@gmail.com
21	Kamlesh Mishra	kmishrabhu@gmail.com
22	Anil Dwivedi*	anilcs250@gmail.com
23	Ravi Gumber	ravigumber1985@gmail.com
24	Praveen Kumar Sharma	praveensha77@gmail.com
25	Abhishek Yadav	abhishekyadav.nnl@gmail.com
26	Ashish Gupta	mnit.ashish2006@gmail.com
27	Rahul Rajoriya	rahul.rajoriya08@gmail.com
28	Gagan Batra	gaganbatra85@gmail.com
29	Manisha Jain	jain5175@gmail.com
30	Parvesh Chopra	parveshchopraa@gmail.com
31	Rakesh Yadav	rakeshdagar83@gmail.com
32	Sunil Saini	sainisunil92@yahoo.com
33	Raj Kumar*	rajkumar032002@yahoo.com
34	Ankur Chawla	aim.ankur@yahoo.co.in
35	Shailendra kumar	skumar_025@yahoo.co.in
36	Shalini Bisht	shaliniissarbisht@gmail.com
37	Santosh Kumar Agarwal	santoshkumar.engg@gmail.com
38	Suresh Kumar	kumarsuresh151979@gmail.com
39	Ashish srivastava	ashishdra@gmail.com
40	Pradip sarin	pradipsarin@yahoo.com
41	Rahul Yadav	rahulrao1206@gmail.com
42	Richa Jha/Priyanka Jha	richaignou95@gmail.com
43	Prem Prakash	prm185@gmail.com
44	Diwakar Singh	diwakar_chahar@yahoo.com
45	Samreen Raza	samreenraza2000@yahoo.com
46	Rashmi Narayan Kotian	jagadeeshan_1981@yahoo.co.in
47	Vivek Chaudhary	vivekonline29@rediffmail.com
48	Amit Kakkar	amit1kakkargmail.com

49	Ashish Kumar Bharti/ Raj Kumar*	rajkumar032002@yahoo.com
50	Mohammad Hamid	hamind17@gmail.com
51	Lalan Jha	lalanjha80@yahoo.com
52	Ratnesh kumar Singh	ratnesh6672@gmail.com
53	Vishal Kapoor	vishalkapoor1983@gmail.com
54	Amit Kumar	amitthakurlic@yahoo.in
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56	Kunal Malhotra	malhotra.kunal91@gmail.com
57	Vidit Sharma	vidit.sharma1@hotmail.com
58	Dikshant Singh	dikshantraghav@gmail.com
59	Harindra Pal Nagda	harindranagda@hotmail.com
60	Shamik Singha Roy	shamik_sr@rediffmail.com
61	Smitha Sreekumar	jofinmathew@gmail.com
62	Gaurav Kumar*	gauravrohilla89@gmail.com
63	Rohit Chopra	rohit.chopra@bestechgroup.com
64	Ashutosh Fotedar	ashutoshfotedar@gmail.com
65	Kapil Aggarwal	kapil_a2005@rediffmail.com
66	Gaurav Singla	singla.gaurav9@gmail.com
67	Pankaj Kumar	pankaj@nsk.com
68	Sandeep Sharma	sandeep.121.sharma@gmail.com
69	Kiran Mishra	kiranmishra.2007@gmail.com
70	Saurabh Jain	saurabhs20@yahoo.com
71	Nitesh Rohilla*	nitesh.rohilla001@gmail.com
72	Rajdeep Yadav	yadav_raj7@rediffmail.com
73	Sachin Batheja	sachin.batheja@yahoo.com
74	Souvik Ghosh	souvik.ghosh@hotmail.co.in
75	Rajendra Singh Chahar/ Anuraj Singh	anuraj2110@gmail.com
76	Rajesh Kumar Jain	rajeshkjain.99@gmail.com
77	Vikas Gupta*	vikas.gupta7878@gmail.com

78	Rahul Kapoor*	rkapoor_87@rediffmail.com
79	Anil Dwivedi*	anilcs250@gmail.com
80	Amit Kumar Thakur	amitthakurlic@yahoo.in
81	Deepak Gupta	deepacgupta@gmail.com
82	Bansi Lal Mahlawat	a_Bansi.Mahlawat@airtel.com
83	Dharam Narayan Tiwari/ Shashi Vir Singh	shashivir@yahoo.com
84	Alok Kumar Singh*	alokmechboy@gmail.com
85	Mridul Verma	mridul_varma@yahoo.co.in
86	Prateek Sharma*	prateek.psharma@gmail.com
87	Paramjeet Singh	param194@gmail.com
88	Anita Chadha & Sanjeev Chadha*	sanjeev_chadha35@yahoo.co.in
89	Monica Gulati	mini.angel.22@gmail.com
90	Rakesh Chaudhary	kumar5104@gmail.com
91	Pradeep Jangra*	pradeepjangra87@gmail.com
92	Ramesh Chander	-
93	Rahul Mishra	rahul.mishra90@gmail.com
94	Prateek Tiwari	yesprateek@gmail.com
95	Himanshu Sethi*	winiscertain@gmail.com
96	Alok Singh (Bhim Singh)*	alokmechboy@gmail.com
97	Kilanoor Ganeshan Mudallar	ganeshanec@gmail.com
98	Deepak Jain	deepakjain20@gmail.com
99	Deepak Fialok*	fialok.deepak@gmail.com
100	Gagan Nagpal	wrietogagan@gmail.com
101	Abhishek Kapoor	abhishek.kapoorajm@gmail.com
102	Yogesh Kumar	yogesh4697@gmail.com

*Applicants who have filed more than one application.

3. The Director General Anti-Profitteering (DGAP), after completing the investigation has submitted his Report under Rule 129 (6) of the CGST Rules, 2017 on 24.05.2018 followed by his subsequent reports submitted on 01.08.2018 and

28.08.2018. The Report of the DGAP mentions 109 Applicants out of the 138 Applicants out of which in as much as 26 have filed duplicate applications and 2 have submitted triplicate applications.

4. The DGAP in his report has stated that a notice was issued to the Respondent under Rule 129 of the CGST Rules, 2017 to submit his reply regarding the allegations that the benefit of ITC had not been passed on to the above Applicants on the purchase of the flats and also to suo moto declare the amount of profiteering. Since the Respondent failed to submit all the documents within the prescribed time extension was sought by the DGAP for completing the investigation. The Standing Committee vide it's minutes of the meeting dated 28.02.2018 had granted extension of 3 months in terms of Rule 129 (6) of the CGST Rules 2017. The DGAP has also reported that after issue of a number of summons the Respondent vide his letters dated 11.01.2018 & 19.02.18 had submitted various documents such as:-

1. Independent Auditor's Report.
2. Balance Sheet, Profit & Loss Account and Trial Balance for the period 2016-17.
3. VAT-R1 (Jan-Mar) and CST Form-1 (Jan-Mar) for the period 2016-17.
4. VAT-R1 (Apr-Jun) and CST Form-1 (Apr-Jun) for the period 2017-18.
5. Service Tax Return (ST-3) for the period Oct-Mar, 2016.
6. GSTR-1 Return for the period July, 2017.
7. GSTR-3B Return for the period July, 2017.
8. Two sample copies of demand letters.
9. Purchase invoices of various materials purchased during Apr-Sept., 2017.
10. Annexure-1 (Pre-GST impact of Input Tax Credit on Cost).
11. Annexure-2 (Cost Sheet Performa for Goods/Services).
12. Input Tax Credit (VAT) Ledger Account for the period 2016-17.
13. Summary of purchased materials/inputs.
14. VAT and GST Returns
15. Project Report submitted to RERA

5. The report further states that the Respondent had admitted that the ITC was not available during the year 2016-17 but it was available from 01.07.2017 after

introduction of the GST. The Respondent had also submitted the following data as has been depicted in the Table below to show that the ITC on Excise Duty, Countervailing Duty (CVD) and capital goods which was not available earlier was now available:-

S. No.	Nature of pre-GST Tax	Total Amount (In Rs.)
1	Excise Duty/CVD included in cost, now available as ITC	46,91,507/-
2	Credit on Capital Goods capitalized not available earlier but now available	2,05,50,719/-
3	Central Sales Tax (CST)	For material 12,04,661/- for capital goods 24,47,563/- Total Rs. 36,52,224/-
4	Total ITC (1+2+3)	2,88,94,450/-
5	ITC part of Cost	46,91,507/- + 12,04,661/-=58,96,168/-
6	Cost of Sale (before interest)	50,44,57,118/-
7	Interest	44,83,288/-
8	Cost of Sale after interest (6+7)	50,89,40,406/-
9	Net Sales Realization	1,21,79,69,823/-
10	Profit (9-8)	70,90,29,416/-
11	Percentage of ITC to Sales Realization (4 as % of 9)	2.37%

6. The report also submits that the Respondent had claimed that the provisions of Section 171 of the CGST Act, 2017 were not applicable in as much as there was no reduction in the rate of tax as earlier the "Affordable Housing Schemes" (AHS) executed under the "Affordable Housing Policy 2013" (here-in-after referred to as the Policy) notified by the State of Haryana vide its Notification No. PF-27/48921 dated 19.08.2013 were exempt from the payment of Service Tax and only VAT was leviable @ 5.25%, however after 1.07.2017 an enhanced tax @12% had been imposed in the GST regime. The Respondent had also claimed that in the

case of this Scheme the Respondent could charge only a fixed price not exceeding Rs. 4000/- per sq. ft. carpet area plus taxes, as had been provided under the Policy and in the present case, the maximum price had not been exceeded by him. The Respondent had further claimed that out of the total GST incidence, 50% (6% out of 12% GST) was towards SGST, whereas he was earlier availing ITC on the State VAT and the difference after utilizing the ITC was being paid in cash, therefore, the ITC being allowed was not an additional benefit and the GST liability was not entirely covered by the ITC available to the Respondent. The Respondent had also claimed that he was required to pay GST on the sub-contracted work which was an additional cost to him whereas Service Tax was exempted in the past. He had further claimed that there had been tremendous increase in the prices of inputs including Steel due to which no profiteering could be alleged against him.

7. The DGAP's report also states that two of the Applicants viz. S/Sh. Sukhbir Singh and Ashutosh Fotedar vide their joint letter dated 07.05.2018 had submitted that the Respondent could charge maximum allotment rate of Rs. 4,000/- per sq. ft. carpet area which was inclusive of all costs as was prescribed under the Policy. The DGAP has also informed that one of the Applicants viz. Shri Bharat Bhushan Badesara vide his e-mail dated 12.03.2018 had submitted a copy of the 'Buyer's Agreement' executed with the Respondent along with the copies of the demand letters and payment details which have been detailed below:-

(Amount in Rs.)

S.No.	Payment stages	Date	Basic %	Amount	Service Tax	VAT	CGST	SGST	Total
1	At the time of application	10-04-2015	5%	103182	3189	5417	0	0	111788
2	within 15 days of allotment	15-09-2015	20%	412728	14445	21668	0	0	448841
3	Within 6	15-03-	12.50%	257955	0	13543	0	0	271498

	months of allotment	2016							
4	Within 12 months of allotment	15-09-2016	12.50%	257955	0	13543	0	0	271498
5	Within 18 months of allotment	15-03-2017	12.50%	257955	0	13543	0	0	271498
6	Within 24 months of allotment	15-09-2017	12.50%	257955	0	0	15477	15477	288910
7	Within 30 months of allotment	15-03-2018	12.50%	257955	0	0	10318	10318	278591
	Total			1805685	17634	67713	25796	25796	1942623

8. The DGAP has also informed that complaints were lodged in respect of the two projects viz. (1) Urban Homes, Sector 70A, Gurugram and (2) Urban Homes, Sector-86, Gurugram which are being executed by the Respondent under the above Policy. He has further informed that after perusal of the application filed by the Respondent before the Haryana Real Estate Regulatory Authority (RERA) and as per para 5 (i) of the Policy, it was clear that the maximum sale price per sq. feet carpet area had been fixed at Rs. 4,000/- and no minimum rate had been prescribed and hence, the Respondent could not claim that there was restriction on reducing the price. The DGAP has also submitted that the Respondent's claim that Section 171(1) of the CGST Act, 2017 relating to benefit of ITC was not attracted, as there was no reduction in the GST rate was also not acceptable because the conditions of passing on the benefit of reduced tax rate and benefit of ITC were two independent conditions and Section 171 of the CGST Act, 2017 was attracted if both or either of these two conditions existed.

9 The DGAP has also reported that there was merit in the argument of the Respondent which stated that the exact quantum of ITC could be determined

only after the completion of the project but he has maintained that the profiteering was required to be established in a time bound manner by considering the ITC available to the Respondent and the price realized by him from the buyers.

10. In his Report the DGAP has admitted that in the pre-GST era, Construction Service was exempted from Service Tax vide Notifications No. 25/2012-ST dated 20.06.2012 and 9/2016-ST dated 01.03.2016 and the Respondent was not eligible to avail the ITC on the Excise Duty paid on inputs or Service Tax paid on the input services, but the report also admits that post GST the ITC was available on all the goods and services, therefore considering the submissions of the Respondent that the net taxable value for the year 2016-17 was Rs. 1,64,52,87,429/- on which VAT liability on him was Rs. 14,91,04,173/-, the DGAP has estimated the VAT liability of the Respondent as 9% of the net taxable value (abated value) and 5.098% of the gross amount of Rs. 2,92,49,55,429/- received from the Applicants.
11. The DGAP has also reported that on examination of the GSTR-3B Returns filed by the Respondent it was revealed that the ratio between the taxable turnover and the ITC availed by him in the post-GST era w.e.f. July 2017 to February 2018 was 7.20%.
12. The DGAP has also mentioned that the Central Government had imposed 18% GST with effective rate of 12% in view of 1/3rd abatement on value on the Construction Service vide Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 and the GST rate on the above Service in respect of the Affordable Housing Schemes was reduced to 8% vide Notification No. 1/2018-Central Tax (Rate) dated 25.01.2018. The DGAP has also analyzed the issue of profiteering for the pre-GST period from April 2016 to June 2017 when VAT was payable @ 5.25% and the post-GST period from July 2017 to January 2018 when the effective GST rate was 12% w.e.f. 01.07.2017 and 8% w.e.f. 25.01.2018. Based on the data available on record he has arrived at the comparative figures of ITC available/availed during pre-GST period and post-GST period as under:-

(Amount in Rs.)

	ITC available Pre-GST	ITC Available Post-GST
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Period	FY 2016-17	FY 2017-18 (April to June, 2017)	Total	July, 2017 to January, 2018	February, 2018	July, 2017 to February, 2018
VAT	21557942	11476408	33034350	-	-	-
CGST	-	-	-	3109559 5	5478788	36574383
SGST	-	-	-	3109559 5	5478788	36574383
IGST	-	-	-	1197256 8	1829277	13801845
Total	21557942	11476408	33034350	7416375 8	12786853	86950611
Taxable Turnover	29249554 29	76935214	30018906 43	7256205 66	482186312	12078068 78
ITC ratio to Taxable Value (%)	0.74	14.92	1.1	10.22	2.65	7.2
Additional ITC availed (%)						6.1
Tax Rate	5.25% (VAT)	5.25%(VAT)		12%(GST)	8%(GST)	

13. Based on above data the DGAP has concluded that the ITC available to the Respondent during the pre-GST period from April 2016 to June 2017 was 1.10% of the taxable turnover and during the post-GST period from July 2017 to February 2018, the ITC available to the Respondent was 7.20% of the taxable

turnover and thus there was additional benefit of ITC to the tune of 6.10% (7.20%-1.10%) in the post-GST era, covering the period from July 2017 to February 2018 to the Respondent. The DGAP has also stated that for the period w.e.f. 01.07.2017 to 24.01.2018 while the additional ITC available was 6.10% of the taxable turnover, the tax rate had increased by 6.75 % (12%-5.25%), leaving no benefit of ITC to be passed on to the Applicants. On the other hand, during the period between 25.01.2018 to February, 2018, the additional ITC of 6.10% of the taxable turnover was more than the increase in the tax rate by 2.75% (8%-5.25%), requiring the Respondent to pass on the benefit of additional ITC of 3.35% (6.10%-2.75%) of the taxable turnover to the Applicants by way of commensurate reduction in the price of the flats. The DGAP has further reported that there was no violation of the provisions of Section 171 of the above Act during the period between 01.07.2017 to 24.01.2018 when the GST was leviable @ 12% but there was violation when the GST was reduced to 8% w.e.f. 25.01.2018 to February, 2018 as the Respondent had not passed on the net benefit of ITC to the Applicants which had accrued to him. He has also reported that the profiteered amount came to Rs. 7,20,398/- which included the profiteered amount @ 3.35% and GST @ 8% on the profiteered amount. He has also reported that the Respondent had profiteered an amount of Rs. 1,67,25,103/- from the other allottees who had not filed complaints and this amount was required to be deposited in the Consumer Welfare Fund as they were not identifiable.

14. After perusal of the DGAP's report the Authority in its meeting held on 5.07.2018 had decided to hear the Applicants and the Respondent on 23.07.2018. Accordingly notices were issued to all the interested parties. On behalf of the Applicants Sh. Rajesh Kumar Jain, Bharat Bhushan and 6 other Applicants appeared and the DGAP was represented by Sh. Akshat Aggarwal Assistant Commissioner and Sh. Bhupender Goyal, Assistant Director (Costs). On the request of the parties another hearing was held on 01.08.2018 wherein S/Sh. Bharat Bhushan and R. K. Jain along with 12 other Applicants had appeared. During both the hearings the Respondent was represented by Sh. Dinesh

Sharma, Managing Director along with Sh. J. P. Gaur, Chief Finance Officer, who submitted their written submissions, on 1st August, 2018.

15. In his written submissions, the Respondent has claimed that the amounts of Rs. 50,44,57,118/- and Rs. 50,89,40,406/- mentioned in the report of the DGAP were the costs incurred on construction and not the costs of sales during the period and they had no direct relation with the amount collected from the Applicants as the Payment Plan under the Policy was time bound and not construction linked. The Respondent has also mentioned that the payments by the Applicants were to be made in installments i.e. at the time of application 5% of the cost was to be paid, on allotment 20% was to be paid and subsequently the cost was to be paid in 6 equal half yearly installments each installment being 12.50% of the total value of the apartment. Accordingly he has claimed that Rs. 1,21,79,69,823/- were collected as per the above payment schedule and it had nothing to do with the sales. He has also stated that the amount of Rs. 70,90,29,416/- mentioned as profit was not the profit, as it was the amount of costs either already incurred or which were to be incurred. The Respondent has also claimed that the expenditure on land, license approvals and External Development Charges (EDC) was required to be incurred before start of the construction and hence the initial payments on application, allotment and few periodical installments were meant for funding the above mentioned costs which on an average amounted to 40-45% of the total revenue from the Applicants. The Respondent has also claimed that the percentage of expenditure on construction was far more than the percentage of collections made from the Applicants. He has also argued that besides construction cost there were other expenses as had been mentioned above which needed to be considered before arriving at the profit margin.
16. The Respondent has further submitted that though the benefit of ITC was made available, the basic cost of the raw material had increased abnormally which had resulted in setting off of the benefit of ITC. the Respondent has also claimed that in the post-GST period basic cost of Steel was higher than the cost of Steel during the pre-GST period which had resulted in extra expenditure of Rs. 4,34,80,082/- while the ITC amounted to only Rs. 3,97,12,844/- which was much less than the increase in the price of Steel, hence, the benefit which had accrued

due to ITC of GST was set off on account of increase in the price of Steel, which should be taken into consideration before dwelling into the benefit of ITC.

17. Another plea taken by the Respondent is that his sub-contractors were also exempt from Service Tax earlier, but after the implementation of the GST, the sub-contractors had been registered and they had to discharge their tax liabilities, which were being passed on to the Respondent. He has also stated that during the period from 1st July, 2017 to 28th February, 2018, sub-contractors were liable to pay Rs. 1,19,14,407/- as GST which was passed on to the Respondent. He has also claimed that this extra amount charged by sub-contractors had not been considered as the part of the cost in the post-GST period.
18. The Respondent has also alleged that while he had received 62.50% of the payment due during the pre-GST period, the amount spent on construction during this period was only 25% of the total cost and hence he would receive 37.50% of total payment due during the post-GST period when he would have to spend 75% of the total cost on construction. The Respondent has also claimed that the initial consideration paid by the Applicants was towards the cost incurred/ to be incurred by him against the cost of land, licenses, approvals, administrative and financial expenses which amounted to 40-45% of the total revenue from the Applicants. He has also submitted that while calculating the ITC against the taxable value during the pre-GST period, the taxable value should be accordingly adjusted by giving effect to the above issues during the pre-GST and post-GST period and percentage of ITC should be accordingly recalculated.
19. Finally the Respondent has prayed that the following points needed to be considered by the Authority before concluding that profiteering has been done by him.
 - a). The taxable value should be readjusted and ratio of ITC to taxable value should be recalculated during the pre-GST and post-GST period.
 - b). The cost of construction has increased an account of abnormal price rise of the inputs which should be taken in to account and accordingly set off should be given.

- c). Set off should also be given on account of the liability of tax which was leviable on the sub-contractors.
20. Out of the 109 Applicants, 14 Applicants appeared during the hearings held on 23.07.2018 & 01.08.2018. While some of the Applicants filed written submissions on 23.07.2018 and 01.08.2018, the other applicants made their submissions through e-mails dated 17.07.2018, 26.07.2018, 31.07.2018, 06.08.2018, 07.08.2018, 08.08.2018 and 30.08.2018. The written and oral submissions made by the Applicants are summarized below:-
21. The Applicants did not agree with the DGAP's report which stated that the profiteering was only to the extent of 3.35%. They claimed that the amount of profiteering was 6.10%. They also claimed that the Respondent had recovered VAT @ 5.25% from the Applicants but had paid the Government @ 5.09%. They also requested for imposition of penalty and for early disposal of the case so that the benefit if any was provided to them before the last installment was paid to the Respondent.
22. They also claimed that the increase or decrease in cost on account of the factors other than tax rate and ITC was not to be considered for the purpose of profiteering. They further claimed that the maximum rate of Rs. 4,000/- per sq. ft. carpet area was fixed and any escalation in the cost had already been taken into account at the time of fixing of the above rate. They also submitted that any increase or decrease in the raw material prices was a market phenomenon which was not related to the GST and therefore, the cost escalation factor was not required to be considered by the Authority.
23. The Applicants have also argued that the extra liability claimed by the Respondent on account of GST Charged by the sub-contractors couldn't be taken in to account since they were also availing ITC on the purchases made by them resulting in reduction of cost of the material purchased by the sub-contractors. They further argued that during pre-GST era Composition Scheme was available in the State of Haryana under which 1% VAT was payable which couldn't be passed on to the Applicants. They also alleged that the Respondent had opted to burden the Applicants by collecting VAT @ 5.25%, which had

benefited him. They also claimed that during the same period other builders in the State of Haryana had charged 4.5% VAT which could be substantiated with the demand letters issued to the buyers by such builders. Accordingly the Applicants had claimed that the Respondent had burdened them with extra tax when they were eligible for levy of reduced tax.

24. The Applicants have also pleaded that huge amount of ITC was available to the Respondent which had been availed by him from September, 2017 to February, 2018. This ITC was approximately Rs. 8.70 Crores and was utilized to the extent of Rs. 5.40 Crores for payment of GST by him. They also pleaded that the Respondent was fully aware that the ITC should have been passed on to the buyers after re-calibrating the price, which had not been done deliberately by him which attracted penal provisions under the anti-profiteering law.
25. The Applicants have also attached copies of the e-mail dated 14.07.2018 and reminders dated 21.07.2018 & 26.07.2018 sent by their Association to the Respondent requesting him to extend the benefit of ITC which the Respondent had failed to respond to.
26. Finally the applicants have alleged that during the period between 01.07.2017 to 24.01.2018 the benefit which had accrued to the Respondent was 6.1% as per the calculations given below:-

Re-calibrated rate – Rs. 4,207 (Rs.3,756 + 12% GST)

Already billed and collected rate – Rs. 4,480 (including 12% GST)

Effective rate to be returned to the Home Buyers – Rs. 273 per sq. ft.

Profiteering in % terms = 6.1%.

During the period between 25.01.2018 to 28.02.2018 the actual benefit to the Applicants in % was– $\text{Rs. } 273/4,000 = 6.825\%$

Re-calibrated rate – Rs. 4,056 (Rs. 3,756 +8% GST)

Already billed and collected rate – Rs. 4,320 (including 8% GST)

Effective rate to be returned to the Home Buyers – Rs. 264 per sq. ft.

Profiteering in % terms = 6.1%

Actual benefit to the Applicants in %age – $264/4,000 = 6.6\%$

27. Accordingly, the Applicants have prayed that appropriate amount may be allowed to be refunded by the Respondent along with interest @ 18% p.a. for the period the extra amount had remained with him to all the buyers irrespective of the number of the Applicants who had filed complaints as all the buyers were identifiable.
28. The Authority had sought certain clarifications based on the submissions made by the Applicants and the Respondent and in reply to the letter dated 11th June, 2018 and the directions given during the hearing held on 23rd July, 2018, the DGAP in his reply dated 1st August, 2018 has submitted that for the period before 01.07.2017 the output rate of VAT on the Respondent was 5.25% with an ITC of 1.1% and during the period between 01.07.2017 to 24.01.2018, the output rate of GST was 12% but an additional ITC of 6.1% (7.2%-1.1%) was available to the Respondent, which should have been passed on to the Applicants and 12% GST should have been charged on such reduced amount and therefore, the effective output rate of tax for the Respondent would be 12% of 93.9 (100-6.1) =11.27%. He has also submitted that similarly, for the period after 25.01.2018, the output rate of GST was 8% but additional ITC of 6.1% (7.2%-1.1%) was available to the Respondent which should have been passed on to the Applicants and 8% GST should have been charged on such reduced amount and hence the effective output rate of GST for the Respondent would be 8% of 93.9 (100-6.1) =7.51%. The DGAP has admitted that the effective rate of tax had gone down for the Respondent by 4.15% before 01.07.2017, 4.07% during the period between 01.07.2017 to 24.01.2018 and by 0.31% for the period w.e.f. 25.01.2018 onwards. His report also stated that the provisions of Section 171 of the CGST Act, 2017 were attracted in respect of both the above periods. He has also stated that earlier the Applicants were paying price of Rs. 4210/- per sq. ft. (Rs. 4000/- + 5.25% VAT). and net increase in the ITC after implementation of GST was 6.1% (7.2%-1.1%), hence, the amount of basic installment charged by the Respondent must first be reduced by 6.1% of Rs. 4000 i.e. by Rs. 244/- and the revised basic installment should be Rs. 4000 - Rs. 244 = Rs. 3756/- per sq. ft. He has further stated that during the period between 30.06.2017 to 24.01.2018, the installment

including GST should be Rs. 3756+12% GST= Rs. 4207/-per sq. ft., however, the Respondent had charged Rs. 4000 + 12% GST i.e. Rs. 4480/- which amounted to profiteering of = 6.1% $(4480-4207/4480 \times 100)$. He has further stated that during the period between 25.01.2018 to 31.03.2018, the installment including GST should be Rs. 3756 + 8% GST= Rs. 4056/- per sq. ft., however, the Applicants had been charged Rs. 4000 + 8% GST i.e. Rs. 4320/- which came to profiteering of = 6.1% $(4320-4056/4320 \times 100)$ and hence 6.1% of the amount paid by the Applicants during the entire period from 01.07.2017 to 28.02.2018 was the profited amount.

29. We have carefully examined the DGAP's Report, the written and oral submissions of both the Applicants and the Respondent placed on record. The issues to be decided by the Authority are as under:-

(a.) Whether there was any violation of the provisions of Section 171 of the CGST Act, 2017 in this case?

(b.) If yes then what was the quantum of profiteering?

30. Perusal of Section 171 of the CGST Act shows that it provides as under:-

171. (1) 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.

(2) The Central Government may, on recommendations of the Council, by notification, constitute an Authority, or empower an existing Authority constituted under any law for the time being in force, to examine whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him.

(3) The Authority referred to in sub-section (2) shall exercise such powers and discharge such functions as may be prescribed. 171. (1)

It is very clear from the reading of Section 171 that it deals with two situations one relating to the passing on the benefit of reduction in the rate of tax and the second pertaining to the passing on the benefit of the ITC. In the instant case

though rationalization of tax had not resulted in the reduction in the tax rate, the benefit of ITC had been extended to all the goods and services which were utilized by any builder which was not available in the pre-GST era. This fact has not been denied by the Respondent. Since Section 171 not only deals with passing on the benefit of reduction in the rate of tax but also deals with passing on the benefit of ITC therefore the contention made by the Respondent is legally not correct to the extent that there had been increase in the rate of tax from 5.25% to 12% and then 8% and no benefit could be passed on by him to the Applicants as the Respondent had become entitled to claim ITC the benefit of which was required to be passed on by him to the Applicants as per the provisions of Section 171. The Respondent has also admitted that he had become eligible to claim ITC after coming in to force of the GST and hence he was liable to pass on the benefit to the Applicants.

31. It is also revealed from the submissions made by the Respondent that he was building flats and selling them to the Applicants as per the Policy 2013, in which various parameters have been laid down and one of the conditions as per para 5 (i) of Policy was that the maximum allotment rate per sq. ft. carpet area has been fixed as Rs. 4000/-. Para 5 (i) of the Policy is reproduced below:-

(a) Allotment Rate:- The allotment rate for the Apartment units approved under such projects shall be as follows:-

Sr No.	Development Plan	Maximum allotment rate on per sq. ft. carpet area basis	Additional recovery against balcony of min 5 ft. clear projection#
a.	Gurgaon, Faridabad, Panchkula, Pinjore, Kalka	Rs. 4000/ - per sq. ft.	Rs. 500 per sq. ft. against all balcony area in a flat adding upto and limited to 100 sq. ft., as permitted in the approved building plans.
b.	Other High and Medium Potential Towns	Rs. 3600/ - per sq. ft.	
c.	Low Potential Towns	Rs. 3000/ - per sq. ft.	

Based on the above Policy the Respondent had submitted his Project Report to the RERA stating that the maximum sale price for each flat would be Rs. 4000/- per sq. ft. carpet area. Therefore, the claim of the Respondent that the price was fixed at Rs. 4000/- by the Haryana Government is incorrect as he had himself made offer of selling the flats at the above rate. It is also clear from the perusal of the above para that the above price was the maximum price and there was no restriction on the Respondent to charge less price. The Respondent had chosen to collect the maximum rate fixed by the Policy and therefore his plea that the rate reduction was not possible was not correct. Moreover the rate offered by the Respondent did not include taxes and it is a fact that the Applicants had paid 5.25% VAT in the pre-GST era and GST @ 12% and 8% for the period between 01.7.2017 onwards. The Buyer's Agreement vide paras 4.1, 5.3 and 5.5 clearly indicates that the Applicants were liable to pay all the taxes as applicable. Para 5.3 of the agreement states that, "the sale consideration does not include any taxes, surcharge etc. which is payable or levied on this transaction, sale and purchase of this unit. The Allottee(s) agrees and undertakes to pay any fresh incidence thereof that may be applicable on account of any fresh tax, levy, fees, charges, statutory dues or cess whatsoever including Value Added Tax (VAT), G.S.T. Service Tax, etc. on the rates as applicable including any enhancement or increase thereof, even if it is retrospective in effect. The Allottee(s) undertakes to pay such proportionate amount, if any, promptly on demand by the Developer". Therefore the Respondent was obligated to pass on the benefit of ITC in terms of reduction in tax and hence he cannot appropriate the ITC which had become available to him on the GST which had been paid by the Applicants.

32. It is also revealed from the VAT returns filed by the Respondent that he had paid an amount of Rs. 14,91,04,173/- as VAT for a taxable turnover of Rs. 1,64,5287,429/- during the year 2016-17 and his VAT liability was 9% of the net taxable value and his liability was 5.098% of the unabated gross value of Rs. 2,92,49,55,429/-. During the year 2017-18 for the first quarter the taxable turnover was Rs. 7,69,35,214/- while the output tax liability was Rs. 39,21,893/-. Thus the total taxable turnover of these two periods was Rs. 30,01,89,06,44/- while the output tax liability was Rs. 15,30,26,066/- and the ratio of ITC to the taxable turnover was 1.10%. Similarly the taxable value for the period from July 2017 to February 2018 was Rs. 1,20,78,06,878/- while the tax liability was Rs.

12,56,42,894/- and the ITC ratio to taxable turnover was 7.20%. These facts have also not been disputed by the Respondent but what was disputed was that the above ratio should be calculated taking into account the cost of construction rather than the taxable turnover. This argument does not hold good because the Policy makes it mandatory on him that he could not charge more than Rs. 4000/- per sq. ft., the price which he had himself offered and there is no provision of price escalation in the above price either in the above Policy or in the Buyer's Agreement. The Respondent vide his submissions dated 01.8.2018 has himself admitted that he had collected 62.50% of the amount due during the pre-GST period but utilized it only to the extent of 25% meaning thereby that the balance amount had been utilized by the Respondent in his business and no interest had been paid by him on this amount to the Applicants. It is also apparent from the returns that when compared to the pre- GST period where 86% of the tax liability was paid in cash after availing ITC, in the post GST period the entire amount of tax liability had been paid through ITC, which shows that the entire 12% GST liability was paid through ITC while 12% GST was being collected by him from the Applicants. Therefore this Authority is of the view that the ratio of the ITC to the taxable turnover calculated by the DGAP is correct and the Respondent has not placed any concrete facts or reasons on record to dispute the same.

33. The Respondent has pleaded that since the cost of Steel one of the major raw materials had increased this increase should have been accounted for before alleging profiteering. This argument of the Respondent is not tenable since he had himself offered the maximum price of Rs. 4000/- and there was no provision of revision of this price on the basis of escalation in the price of the raw material in the Policy. The Applicants have also rightly objected to this pleading stating that the price fluctuations were considered at the time of fixing of the rate of Rs. 4000/- per sq. ft. From the details given by the Respondent no conclusion can be arrived at without considering the cost of all the inputs and their cost since for most of the building material there had been rate rationalization and all the raw material was available without CST across the country. Since he has claimed that 75% construction had been done in the post-GST era there was all the more scope for reduction in the cost of construction. Moreover as seen from para 2.2

of the Buyer's Agreement **"The allottee shall pay to the Developer 5% of the total cost at the time of application and shall make payment of 20% at the time of allotment i.e. 25% of total sale consideration at the time of signing of this agreement. The allottee agrees and undertakes to pay 75% balance of the total cost in six equated six monthly installments spread over three years period with no interest falling from the due date of payment"** (emphasis supplied). Thus every Applicant has paid 5% of the total cost at the time of application, 20% at the time of allotment and 75% balance of the total cost shall be paid in equated six monthly installments spread over three year period. One of the grievances of the Applicants is that 25% of total sale consideration which had been paid at the time of signing of the Buyer's Agreements had earned interest for the Respondent, which had not been taken into consideration while fixing the cost of the flats. Therefore the contention of the Respondent that the cost factor should be taken into account is not valid and justifiable as there is no escalation clause in the Agreement and the Respondent has also availed benefit of interest on the amount paid by the Applicants.

34. One of the arguments advanced by the Respondent is that in the pre-GST regime there was no tax liability on the sub-contractors and in the post-GST era the tax levied on the sub-contractors was to be borne by the Respondent. This argument is also not tenable because the entire amount is eligible for ITC to the Respondent which has been admitted by him in his written submissions. Moreover the sub-contractors are also eligible for ITC which was not available to them earlier and on account of rationalization of tax rates many of the inputs were now available at the reduced rates.
35. From the above narration of facts it is absolutely clear that the excess ITC was available to the Respondent the benefit of which he was required to pass on to the Applicants. The Respondent cannot appropriate this benefit as this is a concession given by the Government from its own tax revenue to reduce the prices being charged by the builders from the vulnerable section of society which cannot afford high value apartments. The Respondent is not being asked to extend this benefit out of his own account and he is only liable to pass on the

benefit of ITC to which he has become entitled by virtue of the grant of ITC on the Construction Service by the Government.

36. The second issue which is required is to be settled is that what was the extent of the profiteering. The DGAP had originally reported that the profiteering was 'nil' for the period from July, 2017 to January, 2018 and 3.35% for the period between 26th January, 2018 to February, 2018 if the tax was levied @ 12% & 8% respectively. However the Applicants had disputed these calculations and submitted that the actual benefit that the Respondent has to pass on to all of them was to the extent of 6.1% for both the periods when the tax was levied @ 12% as well as when the tax was levied at @ 8%. In his subsequent report called for by the Authority from the DGAP, he has submitted the revised calculations which are reproduced below. The total amount of profiteering as calculated by the DGAP is also mentioned in the subsequent table:-

Particulars		Amount (in Rs.)
Basic Sale Price Collected for both the projects (Rs.)		
Jul-17	A	-
Aug-17	B	72,49,48,683
Sep.17	C	1,59,171
Oct,17	D	-
Nov.17	E	2,58,475
Dec.17	F	2,54,237
Jan.18	G	-
Total Basic Sale Price Collected for both the projects during July, 2017 to January, 2018 (Rs.)	H= Total of A to G	72,56,20,566
GST @ 12% Collected	I=H*12%	8,70,74,468
Actual Amount Collected	J=H+I	81,26,95,034
Benefit of 6.10% of Basic Sale Price	K=H*6.10%	4,42,62,855

Recalibrated Basic Sale Price	L=H-K	68,13,57,711
GST@12% to be collected	M=L*12%	8,17,62,925
Total Amount to be collected	N=L+M	76,31,20,637
Profiteering Amount to be passed on	O=J-N	4,95,74,397

S.No.	Particulars	Period	Total Profiteering Amount (Rs.)
1	Profiteering for all Home Buyers	July, 2017 to January, 2018	4,95,74,397
2	Profiteering for Applicants Only	February, 2018	13,11,769
3	Profiteering for Other than Applicants	February, 2018	3,04,54,665
	Total Profiteering		8,13,40,831

37. The DGAP has arrived at the above figures of profiteering based on the turnover for the period between 01.07.2017 to 24.01.2018 and the amount of installments for the period of 25.01.2018 to 28.02.2018. Accordingly, he has arrived at the profiteering amount of Rs. 8,13,40,831/-. However, the Authority has taken the basic principle followed by the DGAP i.e. 6.1% of profiteering and accordingly the amount of profiteering has been calculated for each type of flat to arrive at the profiteering amount for each and every buyer depending upon the type of flat he has purchased. In view of the above the Authority determines the amount of profiteering as Rs. 8,22,80,998/- for all the 2476 flats.

38. The DGAP has calculated the profiteering @ 6.1% on the base price of Rs. 4000/- per sq. ft. and accordingly calculated tax amount on the reduced payment. The calculations made by the DGAP are placed below which are correct and the Authority is in full agreement with the same:-

Head	Row	Profiteering Calculation		
		Calculation	GST @12%	GST @8%
Rate (Per Sq. Ft.)	A		4000	4000

Profiteering @6.1%	B		244	244
New Rate (Per Sq. Ft.)	C	A-B	3756	3756
GST @X%	D	X% of C	450.72	300.48
Total Amount to Be Charged	E	C+D	4206.72	4056.48
Amount Already Charged	F	A + X% of A	4480	4320
Profiteered Amount per sq. ft. (Rs.)	G	F-E	273.28	263.52

39. Accordingly, it is held that the Respondent has profiteered an amount of Rs. **8,22,80,998/-** from the flat owners. The details of profiteering made by him from the individual flat owners are as under:-

PROJECT: URBAN HOMES SECTOR-70A GURUGRAM													
Type/ Area (Sq. Ft.)	No. of Flats	GST @12%					GST @8%					Total Profiteering in Rs.	
		Instalment Amount	GST Amount	Instalment + Tax	Profiteering %	Profiteering Amount	Instalment Amount	GST Amount	Instalment + Tax	Profiteering %	Profiteering Amount	For 1 Flat	All Flats
A/393.33	102	170529	20463	190992	6.10%	11651	170529	13642.32	184171	6.10%	11234	22885	2334269.16
B/394.91	78	173909	20869	194778	6.10%	11881	173909	13912.72	187822	6.10%	11457	23339	1820409.85
C/398.61	27	174582	20950	195532	6.10%	11927	174582	13966.56	188549	6.10%	11501	23429	632580.419
D/600.42	690	256460	30775	287235	6.10%	17521	256460	20516.8	276977	6.10%	16896	34417	23747683.1
E/603.41	537	257955	30955	288910	6.10%	17623	257955	20636.4	278591	6.10%	16994	34618	18589630.3
F/615.57	179	264035	31684	295719	6.10%	18039	264035	21122.8	285158	6.10%	17395	35433	6342595.96
PROJECT: URBAN HOMES SECTOR-86 GURUGRAM													
A/382.52	47	170540	20465	191005	6.10%	11651	170540	13643.2	184183	6.10%	11235	22886	1075664
B/386.64	22	172600	20712	193312	6.10%	11792	172600	13808	186408	6.10%	11371	23163	509584.24

C/398.5	24	176644	21197	197841	6.10%	12068	176644	14131.52	190776	6.10%	11637	23706	568934.995
D/600.42	378	256460	30775	287235	6.10%	17521	256460	20516.8	276977	6.10%	16896	34417	13009600.3
E/603.41	294	257955	30955	288910	6.10%	17623	257955	20636.4	278591	6.10%	16994	34618	10177562.9
F/615.57	98	264035	31684	295719	6.10%	18039	264035	21122.8	285158	6.10%	17395	35433	3472482.71
TOTAL	2476	2595704	311484	2907188	6.10%	177338	2595704	207656	280336 0	6.10%	171005	348343	82280998

40. In view of the above facts the Authority under Rule 133 (3) (a) of the CGST Rules, 2017 orders that the Respondent shall reduce the price to be realized from the buyers of the flats in commensurate with the benefit of ITC received by him as has been detailed above. Since the present investigation is only up to 28.02.2018 any benefit of ITC which shall accrue subsequently shall also be passed on to the buyers by the Respondent. He shall not only pass on the benefit as has been mentioned above to the 109 Applicants who are before us but to all the 2476 buyers as they are identifiable. Respondent is further directed to refund or reduce the amount, to the extent calculated above to each and every buyer at the time of collecting the last installment along with the interest @ 18% per annum to be calculated from the date of the receipt of the excess amount from each buyer, within a period of 3 months from the date of receipt of this order.
41. It is evident from the above that the Respondent has denied benefit of ITC to the buyers of the flats being constructed by him under the above Policy in contravention of the provisions of Section 171(1) of the CGST Act, 2017 and has thus realized more price from them than he was entitled to collect and has also compelled them to pay more GST than that they were required to pay by issuing incorrect tax invoices and hence he has committed an offence under section 122 (1) (i) of the CGST Act, 2017 and therefore, he is liable for imposition of penalty. Accordingly, a Show Cause Notice be issued to him directing him to explain why the penalty prescribed under Section 122 of the above Act read with rule 133 (3) (d) of the CGST Rules, 2017 should not be imposed on him.
42. Further, the Authority, as per Rule 136 of the CGST Rules 2017 directs the Commissioner of State Tax 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 the all the buyers. A report in compliance of this order shall be submitted to this Authority by the Commissioner within a period of 4 months from the date of receipt of this order. A copy each of this order be supplied to the Applicants, the Respondent, Commissioner State Tax Haryana as well as the Principal Secretary (Town & Country Planning), Govt. of Haryana for necessary action. File be consigned after completion.

-Sd-

(B. N. Sharma)
Chairman

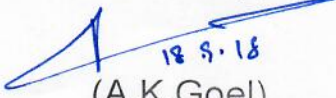
-Sd-

(J. C. Chauhan)
Technical Member

-Sd-

(R. Bhagyadevi)
Technical Member

Certified copy


18.9.18
(A.K. Goel)
Secretary NAA



F.No.22011/NAA/33/2018 | 603 to 607

Dated: 18.09.2018

Copy to:-

1. M/s Pyramid Infratech Pvt.Ltd., 217A-217B, 2nd Floor, Sun City Business Tower, Sector 54, Golf Course Road, Gurugram, Haryana-122002.
2. Sh. Sukhbir Rohilla, sukhbirrohilla001@gmail.com and 108 others as per the list mentioned in the order.
3. 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,
4. Principal Secretary to the Govt. of Haryana, Town & Country Planning Department, Haryana, SCO 71-75, Sector-17C, Chandigarh-160017,
5. Commissioner, Commercial Tax, Vanijya Bhawan, Plot No. 1-3, Sector-5, Panchkula, Haryana-134151,
6. NAA website.