

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

Case No.	72/2019
Date of Institution	14.06.2019
Date of Order	13.12.2019

In the matter of:

1. Shri Abhishek, House No. 62, Ward No. 9, Behind Post Office, Julana, Jind, Haryana-126101.
2. Director General of Anti-Profiteering, Central Board of Indirect Taxes & Customs, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.

Applicants

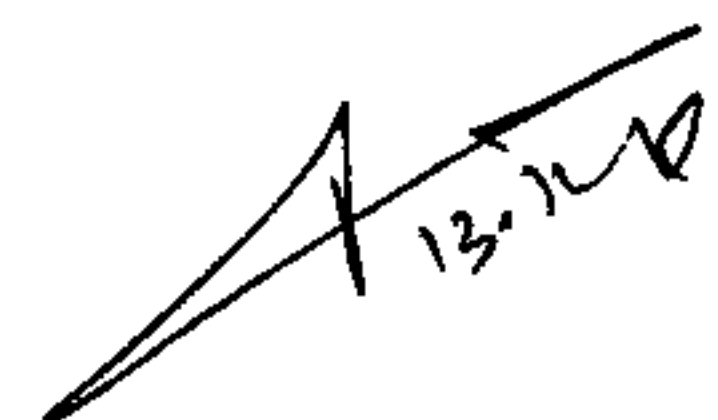
Versus

M/s. Signature Builders Pvt. Ltd., Unit No.1309, 13th floor, Dr. Gopal Das Bhawan, 28, Barakhamba Road, Connaught Place, New Delhi-110001

Respondent

Quorum:-

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



Present:-

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

ORDER

1. The present Report dated 12.06.2019 and the subsequent Report dated 22.07.2019 have 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 the Applicant No. 1 had filed an application dated 29.09.2018 before the Standing Committee on Anti-profiteering, under Rule 128 of the Central Goods and Services Tax Rules, 2017 and alleged that the Respondent had not passed on the benefit of input tax credit by way of commensurate reduction in price, in terms of Section 171 of the Central Goods and Services Tax Act, 2017 and had charged GST on the pre-GST base price of Rs. 4000 per sq. feet.
2. The above reference was examined by the Standing Committee on Anti-profiteering and vide minutes of its meeting dated 13.12.2018, it was forwarded to the DGAP for detailed investigation.
3. The DGAP on receipt of the application issued notice dated 16.01.2019 to the Respondent to reply as to whether he admitted that the benefit of ITC had not been passed on to the Applicant No. 1 by way of commensurate reduction in price and if so, to suo-moto determine the quantum thereof and indicate the same in his reply to the notice as well as furnish all the supporting documents. Further, the

DGAP vide his letter dated 16.01.2019, had given an opportunity to the Respondent to inspect the non-confidential evidences/information submitted by the above Applicant. However, the Respondent did not avail of the said opportunity. The DGAP, vide e-mail dated 14.01.2019 had requested the Applicant No. 1 to provide copies of demand letters and any other relevant documents along with his contact details. However, neither the Applicant responded nor did he submit the desired documents to the DGAP. The DGAP, vide email dated 31.05.2019, had also given the Applicant No. 1 an opportunity to inspect the non-confidential evidences/information submitted by the above Respondent. However, the Applicant No. 1 did not avail of the said opportunity.

3. The DGAP had sought extension of time for completing the investigation which was extended by this Authority vide its order dated 19.03.2019 in terms of Rule 129 (6) of the CGST Rules, 2017. The period of the investigation is from 01.07.2017 to 31.12.2018.
4. In response to the notice dated 16.01.2019 issued by the DGAP, the Respondent vide his replies dated 06.02.2019, 21.02.2019 and 01.05.2019 submitted that the Respondent has a housing project construction company and was developing the present project in Sector-93, Gurugram under the Affordable Housing Scheme, i.e., the Pradhan Mantri Awas Yojna. He further submitted that he was not directly engaged in any construction activity and all the work related to the project was assigned to various sub-contractors, who procured all the required raw materials on their own except Steel, Cement and RMC which were supplied by the Respondent on free of charge basis.

However, the project was executed under the supervision of the staff

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

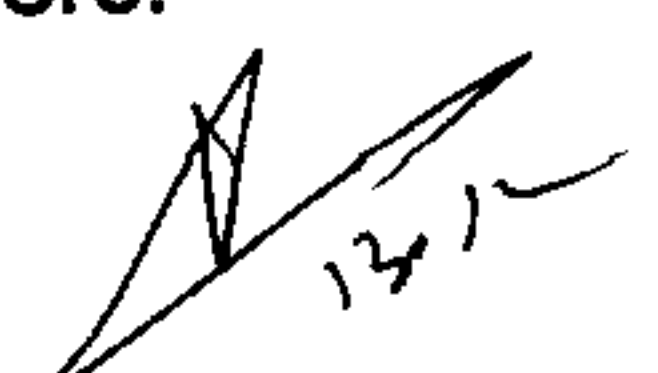
would be passed on to the home buyers on or before the completion of the project.

5. The Respondent further submitted that Section 171 of the CGST Act, 2017 provided that it was mandatory to pass on any benefit due to reduction in rate of tax or input tax credit, to the consumer, by way of commensurate reduction in prices and the applicability of this statute would have arisen in the following two situations:

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

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

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



7. The Respondent also raised objection that the Applicant No. 1 was neither a buyer in the preset project nor he was an interested party as per the provision of CGST law. The explanation to Rule 137 of the CGST Rules, 2017 while defining "interested party" did not imply that any person, not having any interest in the transaction, could become an interested party. The Respondent also submitted that the proceedings under Section 171 of the CGST Act, 2017 could only be initiated on the basis of a complaint from any interested party.

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

- (a) Copies of GSTR-1 Returns for the period July, 2017 to December, 2018.
- (b) Copies of GSTR-3B Returns for the period July, 2017 to December, 2018.
- (c) Copy of Tran-1 Return for transitional credit.
- (d) Copies of VAT & ST-3 Returns for the period April, 2016 to June, 2017.
- (e) Details of applicable tax rates, pre-GST and post-GST.
- (f) Copy of Balance Sheet (including all annexures and profit & loss account) for FY 2016-17 & 2017-18.
- (g) Copy of Electronic Credit Ledger for the period 01.07.2017 to 31.12.2018.
- (h) CENVAT Credit/Input Tax Credit register for the period April, 2016 to December, 2018.
- (i) Details of turnover, output tax liability, GST payable and input tax credit availed.
- (j) List of home buyers and commercial shop buyers in the project "Orchard Avenue - 93", along with the details of benefit passed on to them.
- (k) Reconciliation of turnover reported in the GSTR-3B returns with that in the list of home buyers.
- (l) Copies of sample ledger showing benefit of ITC passed on.

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

9. Based on the above mentioned documents filed by the Respondent, the DGAP submitted that the main issues for determination were whether there was any benefit of reduction in rate of tax or input tax credit on the supply of construction service by the Respondent after implementation of GST w.e.f. 01.07.2017 and if so, whether such benefit was passed on to the Applicant No. 1, in terms of Section 171 of the CGST Act, 2017.

10. The DGAP further submitted that the Respondent, vide his letter dated 06.02.2019, submitted a copy of an application dated 17.08.2016, demand letters and payment recipients for the sale of flat No. A-801 to one of the recipients Shri Naphe Singh, measuring 543.539 square feet, at the basic sale price of Rs. 4,000/- per square feet and 85.94 square feet balcony area at the basic sale price of Rs. 500/- per square feet. The details of payment schedule were furnished in Table-'A' below:-

Table-'A'

(Amount in Rs.)

S. No.	Payment Stage	% of total cost
1	At the time of Application	5% of total cost
2	At the time of Allotment	20% of total cost
3	Within 6 months of Allotment	12.5% of total cost
4	Within 12 months of Allotment	12.5% of total cost
5	Within 18 months of Allotment	12.5% of total cost
6	Within 24 months of Allotment	12.5% of total cost
7	Within 30 months of Allotment	12.5% of total cost
8	Within 36 months of Allotment	12.5% of total cost

11. The DGAP further observed that the Respondent had raised the issue that the benefit was already credited / passed on to the buyers. The DGAP also stated that from the copy of the ledgers furnished by Respondent as a part of his letter dated 14.05.2019, he had passed on benefit of 1.50% of the amount demanded post introduction of GST. However, the correctness of the amount of benefit so passed on by the Respondent, had to be determined in terms of Rule 129(6) of the CGST Rules, 2017. Thus, the ITC available to the Respondent and the turnover received by him from the Applicant and other recipients post implementation of GST, had to be taken into account for determining the benefit of input tax credit that was required to be passed on by the Respondent to his recipients.

12. The DGAP also observed that the Respondent also contended that the Applicant No. 1 was neither a buyer in the present project nor was he an interested party under the provisions of CGST law. The Respondent submitted that the proceedings under Section 171 could only be initiated on the basis of a complaint from an interested party and therefore, the present proceedings might be dropped. On examination of this submission, the DGAP observed that clause (c) of Explanation to the Chapter XV of the Rules read as:

(c) "interested party" includes-

a. suppliers of goods or services under the proceedings; and

b. recipients of goods or services under the proceedings;

c. any other person alleging, under sub-rule (1) of rule 128, that a registered person has not passed on the benefit of reduction in the rate of tax on any supply of goods or services or the benefit

of input tax credit to the recipient by way of commensurate reduction in prices.

Besides, in terms of Rule 128 of the CGST Rules, 2017, an application alleging profiteering might be filed by an interested party or a commissioner or any other person. Therefore, though the Applicant No. 1 was not a recipient of service provided by the Respondent, he could still file an application under Rule 128 of the CGST Rules, 2017 alleging profiteering by a registered person.

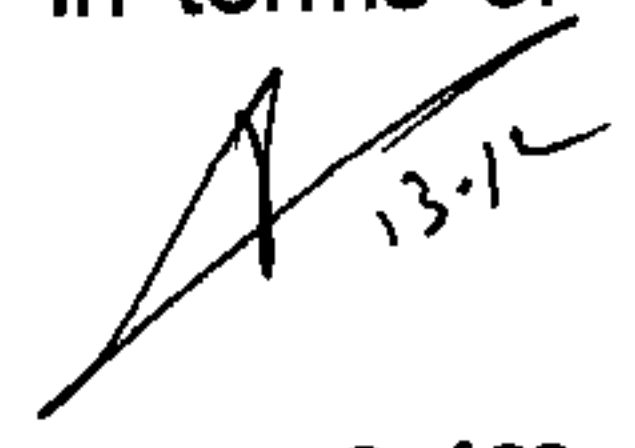
13. The DGAP also submitted that para 5 of Schedule-III of the CGST Act, 2017 (Activities or Transactions which shall be treated neither as a supply of goods nor a supply of services) reads as:-

“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 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”.

Thus, the ITC pertaining to the residential units which were under construction but were not sold was provisional ITC which may be required to be reversed by the Respondent, if such units remained unsold at the time of issue of the completion certificate, in terms of



Section 17(2) & Section 17(3) of the CGST Act, 2017, which read as under:

Section 17 (2) "Where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies".

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

14. Thus the DGAP claimed that the ITC pertaining to the unsold units may not fall within the ambit of the current investigation and the Respondent would be required to recalibrate the selling price of such units to be sold to the prospective buyers by considering the net benefit of additional input tax credit available to them post-GST.

15. The DGAP also observed that prior to 01.07.2017, i.e., before the GST was introduced, as the service of construction of affordable housing provided by the Respondent, was exempted from Service Tax, vide Notification No.25/2012-ST dated 20.06.2012, as amended by Notification No. 9/2016-ST dated 01.03.2016. The Respondent was also not eligible to avail CENVAT credit of Central Excise Duty paid on

inputs or Service Tax paid on the input services, as per the CENVAT

Credit Rules, 2004, which were in force at the material time. However, the Respondent was eligible to avail credit of Service Tax paid on the input services (CENVAT credit of Central Excise Duty was not available) for the commercial shops sold by him. The DGAP further submitted that the Respondent was also eligible to avail ITC of VAT paid on the inputs and could claim deduction from the taxable turnover under VAT (WCT), of the payments made to the registered contractors or sub-contractors for the execution of the project. Further, post-GST, the Respondent could avail ITC of GST paid on inputs and input services including the sub-contracts. From the information submitted by the Respondent for the period April, 2016 to December, 2018, the DGAP furnished the details of the input tax credit availed by him, his turnover from the present project and the ratio of ITC to turnover, during the pre-GST (April, 2016 to June, 2017) and post-GST (July, 2017 to December, 2018) periods in the Table given below:-

Table-'B'

(Amount in Rs.)

S. No.	Particulars	April, 2016 to March, 2017	April, 2017 to June, 2017	Total (Pre-GST)	01.07.2017 to 24.01.2018 (GST @ 12%)	25.01.2018 to 31.12.2018 (GST @ 8%)	Total (Post-GST)
(1)	(2)	(3)	(4)	(5) = (3)+(4)	(6)	(7)	(8) = (6)+(7)
1	Credit of Service Tax Paid on Input Services used for Commercial Shops (A)	7,04,170	15,29,496	22,33,665	-	-	-
2	Input Tax Credit of VAT Paid on Purchase of Inputs (B)	57,49,401	6,05,284	63,54,685	-	-	-
3	Rebate of VAT(WCT) Paid to sub-contractors (C)	16,60,642	2,69,370	19,30,012	-	-	-
4	Total CENVAT/Input Tax Credit Available (D)= (A+B+C)	81,14,212	24,04,149	1,05,18,362	-	-	-
5	Input Tax Credit of GST Availed (E)	-	-	-	1,94,74,702	3,38,83,516	5,33,58,219
6	Turnover from Commercial Shops as per ST-3 return (F)	1,60,89,374	30,71,780	1,91,61,154		5,36,11,866	
7	Turnover from residential flats as per VAT Returns (G)	17,39,19,166	1,93,86,385	19,33,05,551		59,83,56,680	
8	Total Turnover (H)	19,00,08,540	2,24,58,165	21,24,66,705	21,89,59,064	65,19,68,546	87,09,27,610
9	Total Saleable Carpet Area (Excluding Balcony Area) (in SQF) (I)	3,97,688 (Residential)	20,439 (Commercial)	4,18,127	3,97,688 (Residential)	20,439 (Commercial)	4,18,127
10	Total Sold Carpet Area (Excluding Balcony Area) (in SQF) relevant to turnover (J)	2,63,021 (Residential)	4,414 (Commercial)	2,67,435	3,89,022 (Residential)	13,046 (Commercial)	4,02,068
11	Relevant ITC [(K)= (D)*(J)/(I)] or [(K)= (E)*(J)/(I)]			67,27,569			5,13,08,890
	Ratio of Input Tax Credit to Turnover [(L)=(K)/(H)*100]			3.17%			5.89%

16. Thus, from the above Table, the DGAP has claimed that it was clear 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 3.17% and during the post-GST period (July, 2017 to December, 2018), it was 5.89% which confirmed that post-GST, the Respondent had benefited from additional input tax credit to the tune of 2.72% [5.89% (-) 3.17%] of the turnover.

17. The DGAP further observed that the Central Government, on the recommendation of the GST Council, had levied 18% GST (effective rate was 12% in view of 1/3rd abatement on value) on construction service, vide Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017. The effective GST rate on construction service in respect of affordable and low-cost houses upto a carpet area of 60 square metres per house was further reduced from 12% to 8%, vide Notification No. 1/2018-Central Tax (Rate) dated 25.01.2018. In view of the change in the GST rate after 01.07.2017, the DGAP had examined the issue of profiteering 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 with (1) the post-GST period from 01.07.2017 to 24.01.2018, when the effective GST rate was 12% and (2) with the GST period from 25.01.2018 to 31.12.2018, when the effective GST rate was 8% and accordingly, on the basis of the figures contained in table-'B' above, the comparative figures of the ratio of 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

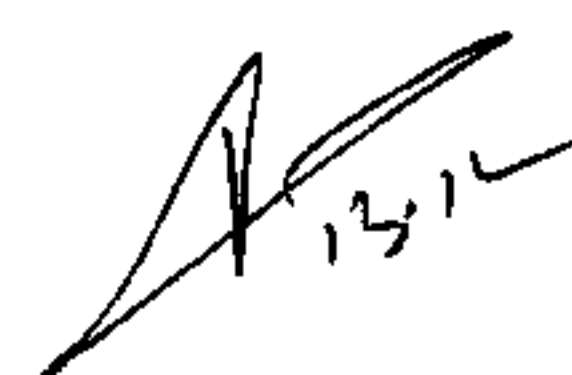
(Profiteering) during the post-GST period, were tabulated in Table-'C' below.

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 - 'B' above (%)	C	5.89	5.89	5.89	5.89
4	Increase in input tax credit availed post-GST (%)	D= 5.89% less 3.17%	2.72	2.72	2.72	2.72
5	Analysis of Increase in input tax credit:					
6	Base Price raised during July, 2017 to December, 2018 (Rs.)	E	21,89,59,064	5,36,11,866	59,83,56,680	87,09,27,610
7	GST raised over Base Price @12% or 8% (Rs.)	F= E*B	2,62,75,088	64,33,424	4,78,68,534	8,05,77,046
8	Total Demand raised	G=E+F	24,52,34,152	6,00,45,290	64,62,25,214	95,15,04,656
9	Recalibrated Base Price	H= E*(1-D) or 97.28% of E	21,30,03,377	5,21,53,623	58,20,81,378	84,72,38,379
10	GST @12% or 8%	I = H* B	2,55,60,405	62,58,435	4,65,66,510	7,83,85,350
11	Commensurate demand price	J = H+I	23,85,63,783	5,84,12,058	62,86,47,889	92,56,23,729
12	Excess Collection of Demand or Profiteering Amount	K= G-J	66,70,369	16,33,232	1,75,77,326	2,58,80,927

18. The DGAP further clarified that the additional input tax credit of 2.72% of the turnover should have resulted in the commensurate reduction in the base price as well as cum-tax price of the flats and shops. Therefore, in terms of Section 171 of the Central Goods and Services Tax Act, 2017, the benefit of such additional input tax credit was required to be passed on to the recipients.



19. The DGAP also submitted that on the basis of the CENVAT/input tax credit availability in the pre and post-GST periods and the details of the amount collected by the Respondent from the home buyers during the period 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. 66,70,369/-for residential flats and commercial shops, which included 12% GST on the base profiteered amount of Rs. 59,55,687/-. The DGAP further mentioned that 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, came to Rs. 1,92,10,558/- which included 12% GST on commercial shops and 8% GST on residential flats, on the base profiteered amount of Rs. 1,77,33,544/-. Therefore, the total benefit of ITC to be passed on during the period 01.07.2017 to 31.12.2018, came to Rs.2,58,80,927/- which included GST (@ 12% or 8%) on the base amount of Rs. 2,36,89,231/-. The DGAP also furnished the home buyer and unit no. wise break-up of the above mentioned amount. The DGAP also clarified that this amount did not include profiteering pertaining to the Applicant No. 1 as he had not bought any flat or commercial shop in the Respondent's present project.
20. The DGAP also observed that the Respondent had supplied the service in the State of Haryana only.
21. The DGAP also clarified that the Respondent had submitted that he had passed on benefit of Rs. 1,41,57,700/- to the home buyers and the summary of category-wise ITC benefit required to be passed on

and the benefit claimed to have been passed on, was furnished in table-'D' below:-

Table-'D'

(Amount in Rs.)

S. No.	Category of Customers	No. of Units	Area (In Sq. ft.)	Amount Received Post GST	Benefit to be passed on as per Annex-12	Benefit claimed to have been Passed on by the Respondent	Difference (profiteering)	Remark
A	B	C	D	E	F	G	H=F-G	I
1	Applicant (Residential)	-	-	-	-	-	-	No unit sold to the Applicant.
2	Other Buyers (Residential)	712	3,89,022	78,77,52,831	2,33,47,091	1,27,61,725	1,05,85,366	Further Benefit to be passed on. List Attached as Annex-13
3	Unsold Flats	17	8,666	-	-	-	-	Unsold Units.
-	Total Residential (A)	729	3,97,688	78,77,52,831	2,33,47,091	1,27,61,725	1,05,85,366	
4	Applicant (Commercial Shop Buyers)	-	-	-	-	-	-	No unit sold to the Applicant.
5	Commercial Shop Buyers	53	13,045.52	8,31,74,779	25,33,836	13,95,975	11,37,861	Further Benefit to be passed on. List Attached as Annex-14
6	Commercial Shop Buyers	2	517.48	-	-	-	-	No Consideration Paid Post-GST. Further no benefit passed on by the Respondent. List Attached as Annex-14
7	Unsold Shop	15	6,919	-	-	-	-	Unsold Units.
-	Total Commercial (B)	70	20,482	8,31,74,779	25,33,836	13,95,975	11,37,861	
-	Grand Total (C)=(A)+(B)	799	4,18,170	87,09,27,610	2,58,80,927	1,41,57,700	1,17,23,227	

22. The DGAP also contended that the Applicant No. 1 had not purchased any residential flat or commercial shop and thus, the Respondent was not required to pass on any benefit of ITC to him. Further, the benefit claimed to have been passed on by the Respondent to the recipients was less than what they ought to have

passed on in case of 712 residential flats by an amount of Rs. 1,05,85,366/- and by Rs. 11,37,861, in case of 53 commercial shops.

23. The DGAP thus concluded that the benefit of additional input tax credit to the tune of 2.72% of the turnover had accrued to the Respondent post-GST and the same was required to be passed on by the Respondent to the recipients. Thus, the Respondent had contravened the provisions of Section 171 of the CGST Act, 2017, in as much as the additional benefit of input tax credit @2.72% of the base price received by the Respondent during the period 01.07.2017 to 31.12.2018, had not been passed on by the Respondent to 765 recipients (712 buyers of residential flats plus 53 buyers of commercial shops). The DGAP also mentioned that 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. 1,17,23,227/- was required to be returned to such eligible recipients.

24. The DGAP also clarified that since the present investigation covered the period from 01.07.2017 to 31.12.2018. Thus, profiteering, if any, for the period post December, 2018, had not been examined as the exact quantum of input tax credit that would be available to the Respondent in future could not be determined at the present stage, when the construction of the project was yet to be completed.

25. The above Report was considered by the Authority in its meeting held on 18.06.2019 and it was decided to hear the Applicants and the Respondent on 03.07.2019. Two personal hearings were accorded to

the interested parties on 03.07.2019 and 16.07.2019, neither the Applicant nor the Respondent appeared for the above hearings.

26. The Respondent however filed his written submissions on 16.07.2019 vide which he submitted that the Applicant No. 1 was not a flat owner in the present project and this fact was also brought to the notice of the DGAP during the investigation phase but was not considered by the DGAP. He further stated that if the Applicant No. 1 was not a flat owner in the said project, then on what basis was he claiming that the benefit of ITC in the pre and post GST period should be passed on to him. He had no locus standi in the said project under complaint. Thus, the entire proceedings had therefore been conducted on misrepresentation made by the Applicant No. 1. The law did not provide for passing on of the benefit of ITC to any passerby on the road.

27. He also submitted that the DGAP's Report dated 12.06.2019 had made incorrect finding that he had benefited from additional input tax credit of 2.72% of the turnover which was based on the average method of his own. He also clarified that he had not been given any opportunity to either controvert or respond to the DGAP adopting the average basis for determining the alleged profiteering.

28. He further stated that it was trite law that for taxing statutes, a mechanism for computation of value on which tax was to be paid was required as 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 can be levied on such transactions. He

further cited the judgements in the cases of **Commissioner of**

Income Tax V. 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. He also contended that the Hon'ble Patna High Court has held in the case of **Larsen & Toubro v State of Bihar 2004 (134) STC 354 (Pat.)** affirmed by the Hon'ble Supreme Court in **Voltas Ltd., (2007) 7 VST 317 (SC)**, that in absence of all exclusions which were to be prescribed for computation of tax, no tax was payable. He further submitted that the recent judgement given in the case of **Larsen & Toubro, 2015 SCC Online SC 738**,supra, had also quoted with approval the decisions of the Patna, Madras and Orissa High Courts relating to machinery provisions in following terms:-

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

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

29. The Respondent also claimed that anti-Profiteering provision under the CGST Act and the Procedure & Methodology drafted as provided in Rule 126 was silent on the timing of benefit accrued on agreement entered in pre-GST regime & transfer of property in goods/services executed in the GST regime and passing on of the same to the buyer especially for unfinished projects. He also mentioned that 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 provisions of anti-profiteering came into effect from the time, the recipient received the goods/services. He further submitted that in the present case, he was engaged in the development of Affordable Group Housing residential flats. The project was commenced on 04.05.2016 with expected completion on 31.03.2020. The transaction entered with the buyer was covered under the definition of works contract involving undivided share of land, transfer of property in goods and services and thus, it was a composite works contract. The Respondent also mentioned that 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 construction with expected date of completion being approximately fifteen months later. He also requested that the profiteering, if any, could only be determined once the project was nearing completion.

30. The Respondent also contended that the average method adopted by the DGAP suffered from the following errors:-

- i. Certain inputs in construction including bricks, stone, dust stone aggregate etc. were exempted from VAT in pre GST period. In the post GST period, such inputs suffer GST @ 5%. Therefore, while computing the input GST, the amount of GST on such tax free items had also been considered by the DGAP which was to the detriment to the Respondent and in fact, the

GST on such items which earlier were tax free had to be eliminated while computing possible profiteering.

- ii. Even while adopting average basis for alleging profiteering, the DGAP had erred in not doing a like comparison adopting similar set of circumstances in the pre and post GST period. Profiteering could be freely determined in the case of a tangible product while comparing the pricing and tax input benefit in the pre and post GST regime and thus, adopting an ad hoc average basis for determining profiteering on a product which was yet to be completed was both arbitrary and premature and was biased against him.

31. The Respondent also claimed that the DGAP in his Report dated 12.06.2019 had stated that the total benefit claimed to have been passed on by the Respondent was Rs. 2,33,47,091/- (Residential flat buyers). However, as per Column G of Table D, the DGAP had noted that the total benefit claimed to have been passed on by the Respondent aggregated to Rs. 1,27,61,725/- (Residential flat buyers) and the details had been computed as per Annexure 13 & 14 of the Report. Thus, during the interim period, he had passed on excess benefit under the provisions of section 171 of the CGST Act, 2017 of Rs. 1,27,61,725/-(Residential flat buyers). He further submitted that in compliance with the provisions of section 171 of the CGST Act, read with the Rules determined on ad hoc basis the following estimated benefit of ITC had been passed on by him to the flat owners:-



- For residential flat owners, the benefit of input credit in comparison with the pre-GST era was determined on ad hoc basis @ Rs. 32.80 per sq. ft.
- For commercial shop buyers the benefit of input credit was determined on ad hoc basis @ Rs. 107/- per sq. ft.

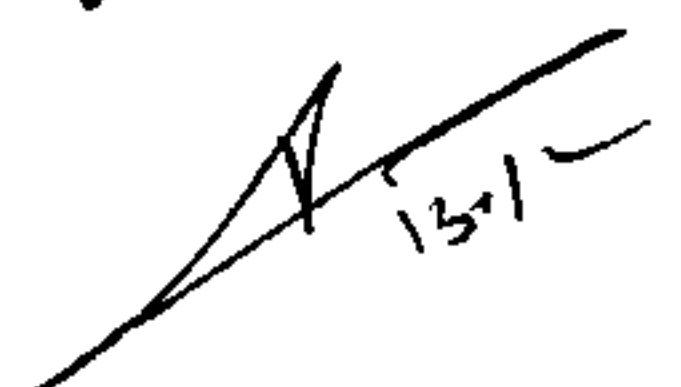
He has also stated that as it was an ad hoc calculation, which was done across the board irrespective of the amounts received from the flat / shop owners in the pre and the post GST periods.

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

- Whether the allegation of the Anti-Profiteering provisions as per section 171 of the CGST Act, 2017 read with CGST Rules, 2017 thereon apply to him since he had made payment of estimated profiteering amount on his own accord despite the project being half complete.
- It had not been appreciated by the DGAP while framing the report that he had pending completion of the project, made an ad hoc estimate of the benefit against ITC. The actual and factual computation could only be made near the completion.

33. The Respondent further raised objections which are as follows:-

- Did the allegation of Profiteering by the Applicant exist when it had been noticed that the provisions of Rule 128(1) had not been followed by the Standing Committee. The application had been dealt by the Standing Committee beyond the prescribed time.



- (ii) Did the continuation of the proceedings under the Anti Profiteering provisions subsisted when it has been established that the applicant No. 1 was not a flat owner and had misrepresented to the Authority. Further the complainant had also misrepresented of not receiving the benefits of ITC difference in the pre and post GST era.
- (iii) Once the allegation of the Applicant of profiteering against the Respondent had been established to be incorrect, could the proceedings against the Respondent continue suomoto. Paragraph 9 read with paragraph 12, 13 and 14 of the "Procedure & Methodology" did not mention circumstances for continuing with the proceedings on their own motion once it had been observed that there has been a written application made against the Respondent.
- (iv) Was the arbitrary finding of profiteering of 2.72% of claims raised during the GST period and ignoring the Respondent's submissions that the construction was yet to be completed by 31.03.2020 maintainable.
- (v) Rule 129(6) only provided a time frame of 3 months for the DGAP to conclude the enquiry and submit his Report along with records. Rule 129 (6) did not provide that it was compulsory for profiteering to be determined at any point during the process of any product / service which was under completion. If so, profiteering would have to be determined in respect of all work in progress. Such an interpretation of Rule 129(6) was erroneous.



- (vi) Absence of mechanism for computing profiteering in the case of real estate sector in the Act, Rules or in the Procedure & Methodology formulated by this Authority in terms of Rule 126 of the CGST Rules.
- (vii) The Respondent was not given any opportunity to object to the adoption of the average basis while computing alleged profiteering.
- (viii) Notwithstanding the above objections, there were errors in computing profiteering under the Anti-Profiteering provisions on average basis as per Table B and consequently Table C especially with regard to average method not being representative of like comparison.
- (ix) The Authorities (DGAP and this Authority) assuming jurisdiction on their own motion when there was a complaint on which the proceedings were initiated and it was subsequently observed that the Applicant's complaint was erroneous as well as misrepresented.
- (x) Whether disputing the ad hoc calculation done by the Respondent and super imposing arbitrary calculation on average basis overlooking the basic fact that both the calculations were ad hoc pending project completion was correct.

34. The Respondent further requested that his above submissions be taken on record for concluding the case without granting any further hearing to him and in case any documents / clarifications were required, the same be conveyed for being submitted to the Authority

35. The Respondent vide his written submissions filed on 19.08.2019 and 18.09.2019 submitted that the Authority had asked him to furnish certain documents. He clarified that he had already submitted these documents to the DGAP during the investigation period which were sought by the Authority. He also claimed that Tran – 2 Return was not applicable, in his case and the agreement executed between the land owner and the Respondent for the project was not applicable for the purpose of section 171 of the CGST Act. He also submitted that it was evident from the submissions made by him before the DGAP on 14.05.2019 and subsequently on 01.05.2019, that he had already passed on the benefit of 1.50% to the buyers and also filed the copy of proof thereof. He further clarified that he had neither claimed any ineligible CENVAT/ITC credit nor reversed any CENVAT/ITC credit during the investigation period.

36. The DGAP was also asked to submit his report on the issues raised by the Respondent vide his above mentioned submissions. The DGAP vide his Report dated 22.07.2019 has submitted that regarding the Respondent's submissions that profiteering could only be determined once the project was nearing completion and all costs, inputs, claims and contingencies had to be taken into account and claimed that the above issues were required to be deliberated upon by applying relevant provisions of the law including Rule 129(6) of the CGST Rules, 2017. He further submitted that in his Report dated 12.06.2019, increase in the ITC as a percentage of the turnover, availed by the Respondent post-GST, had been quantified. The input or input service-wise availability or non-availability of ITC prior to and post-GST, had not been examined. Further, there should be no impact

of the increase in tax rate on the Respondent's input compared to pre-GST tax rate as the supplier of inputs and inputs servicer were now enjoying ITC on all the purchases made by them which they would have passed on to the Respondent. The DGAP further contended that the Respondent had realized an additional amount of Rs. 1,17,23,227/- from 765 recipients (712 home buyers and 53 shop buyers) who were not Applicants in the present proceedings. Therefore, contravention of the Section 171 of the CGST Act, 2017 was in respect of those 765 recipients. He also submitted that all other facts/ queries raised by the Respondent had been explained in his report dated 12.06.2019.

37. We have carefully considered all the Reports filed by the DGAP, submissions of the Respondent and other material placed on record and it is revealed that the Respondent is executing his "Orchard Avenue - 93" project under the Affordable Housing Scheme approved by the Government of Haryana under the Prime Minister Awas Yojana and is constructing both the residential and commercial accommodation. It is also revealed that the Applicant No. 1 had complained to the Standing Committee on Anti-Profiteering on 29.09.2018 that the above Respondent was not passing on the benefit of ITC to him and was also charging GST from him on the pre-GST base price of Rs. 4,000/- per sq. ft. The above complaint was examined by the Standing Committee in its meeting held on 13.12.2018 and was forwarded to the DGAP for detailed investigation as per the provisions of Rule 129 (1) of the CGST Rules, 2017. The DGAP has conducted investigation in the above allegations levelled by

the Applicant and vide his Report dated 12.06.2019 has stated that the Respondent had violated the provisions of Section 171 of the above Act by resorting to profiteering of an amount of Rs. 2,58,80,927/-.

38. The Respondent in his written submissions filed on 16.07.2019 has claimed that the Applicant No. 1 was not a flat owner in the present project and thus, he was not entitled to claim that the benefit of ITC in the pre and post GST period should be passed on to him. In this connection, it would be relevant to refer to Rule 128 (1) of the CGST Rules, 2017, under which an application alleging profiteering can be filed by an interested party or a commissioner or any other person. Therefore, though the Applicant No. 1 is not a recipient of service provided by the Respondent, he can still file an application under Rule 128 (1) of the Rules, alleging profiteering by the Respondent. Therefore, the above contention of the Respondent is not tenable.

39. The Respondent has further contended that the DGAP's Report dated 12.06.2019 had recorded incorrect findings by stating that he had benefited from additional ITC to the tune of 2.72% of the turnover, as this finding was based on the average method applied by the DGAP on his own accord. However, perusal of Table B of the above Report shows that the ratio of CENVAT and VAT for the period between April, 2016 to June, 2017 has been calculated on the basis of the figures reflected by the Respondent in his Service Tax and the VAT Returns filed during the above period. Similarly, the computation of ratio of ITC to turnover for the period from July, 2017 to December, 2018 is based on the details supplied by the Respondent himself. The Respondent had also supplied the details of the total saleable carpet

area and the total sold area relevant to the turnover for both the above periods. Moreover, both the above ratios are based on the actual mathematical computations and not on averages as has been claimed by the Respondent and hence, the above claim of the Respondent is incorrect.

40. He has further claimed that he had not been given opportunity by the DGAP to either controvert or respond to the DGAP's adoption of the average basis for determining the alleged profiteering. In this connection it would be appropriate to mention that as per the provisions of Rule 129 (1) of the CGST Rules, 2017 the DGAP has been entrusted with the responsibility of carrying out detailed investigation in the allegations of profiteering and collect necessary evidence and therefore, he is not required to afford opportunity of hearing to the Respondent being an investigating agency. As per the provisions of Rule 129 (3) the DGAP is required to issue notice to the Respondent which he has issued on 16.01.2019 and hence he has complied with the above provision. Proper opportunity of being heard has been provided to the Respondent by this Authority on 03.07.2019 and 16.07.2019, however he has not availed any of these opportunities but chose to file written submissions in which he has objected to the computations of the DGAP.

41. The Respondent has also contended that this Authority has not provided any basis, method and reasoning for computing profiteering in respect of violation of the provisions of Section 171 of the CGST Act, 2016 under Rule 126 of the above Rules. In this connection, it would be pertinent to mention that Section 171 (1) of the CGST Act, 2017 clearly states that "Any reduction in the 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, the intention of the legislature is amply clear from the above provision which requires that the benefit of tax reduction or ITC is required to be passed on to the customers by commensurate reduction in prices and the same cannot be retained by the suppliers. This Authority has been duly constituted under Section 171 (2) of the above Act and in exercise of the powers conferred on it under Rule 126 of the CGST Rules, 2017 has notified the 'Procedure & Methodology' for determination of the profiteered amount vide its Notification dated 28.03.2018. However, the mathematical methodology for determination of the profiteered amount has to be applied on case to case basis depending on the facts of each case and no fixed formula can be set for calculating the same as the facts of each case are different. The mathematical methodology applied in the case where the rate of tax has been reduced and ITC disallowed cannot be applied in the case where the rate of tax has been reduced and ITC allowed. Similarly, the mathematical methodology applied in the case of Fast Moving Consumer Goods (FMCGs) cannot be applied in the case of construction services. Even the methodology applied in two cases of construction service may vary on account of the period taken for execution of the project, the area sold and the turnover realised. It would also be appropriate to mention here that this Authority has power to 'determine' the methodology and not to 'prescribe' it as per the provisions of the above Rule and therefore, no set prescription can be laid while computing profiteering. It would be further relevant to mention that the power under Rule 126 has been

granted to this Authority by the Central Govt., as per the provisions of Section 164 of the above Act which has approval of the Parliament. Rule 126 has further been framed on the recommendation of the GST Council which is a constitutional body created under the Constitution (One Hundred and First Amendment) Act, 2016. Therefore, the above power has both legislative sanction as well as incorporation in the CGST Act, 2017 and the CGST Rules, 2017. The delegation provided to this Authority under the above Rule is clear, precise, unambiguous and necessary and is well within the provisions of the Constitution and therefore, it has been rightly conferred on this Authority. Hence, the objections raised by the Respondent in this regard are frivolous and without legal force.

42. He has further contended that it was settled that in the taxing statutes mechanism for computation of value should be provided. However, this contention of the Respondent is fallacious as no tax has been imposed under Section 171 of the above Act. It would also be appropriate to mention here that under Section 171 (2) this Authority has been constituted to ensure that the provisions of Section 171 (1) are implanted. Rule 123 of the CGST Rules, 2017 provides constitution of Standing Committee at the Central level and Screening Committees at the State level to prima facie examine the allegations of profiteering which are investigated by the DGAP in detail under Rule 129 (1). This Authority can also seek assistance of the State and Central tax authorities to monitor its orders as per the provisions of Rule 136. Therefore, there is adequate machinery to enforce the anti-profiteering provisions.

43. He has also cited the case of ***Commissioner of Income Tax v. B. C. Srinivasa Setty (1981) 128 ITR 294 (SC)*** in his support. Upon perusal of this judgement, it is observed that it involved valuation of the goodwill for computation of income tax and the same is not the issue in the present case. Thus, it is respectfully submitted that the above case is of no help to the Respondent. The Respondent further cited the case of ***Commissioner of Income Tax v. The Official Liquidator Palai Central Bank Ltd. (1984) 150 ITR 539 (SC)*** which is related with the issue of charging of super profit tax, but, 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 on the judgement passed in the case of ***National Mineral Development Corporation v. State of M. P. and another (2004) 65 SCC 281*** in his support which pertains to the issue of levy of royalty on 'slimes', but since in the present case, this issue is not involved hence, the above case is of no help to the Respondent. He has also placed reliance on the law settled in the case of ***Larsen & Toubro v. State of Bihar and others 2004 (134) STC 354 (Pat.)*** which was affirmed by the Hon'ble Supreme Court in the case of ***State of Jharkhand and others v. Voltas Ltd. (2007) 7 VST 317 (SC)***, in which the Hon'ble Supreme Court had held that in the absence of all exclusions which were to be prescribed for computation of tax, no tax was payable. However, perusal of the facts of the above cases shows that they pertain to the issue of works contracts but since the facts of this case are not similar to the facts of the above cases hence, they do not further the cause of the Respondent. The Respondent has also cited the case of ***Commissioner Central Excise & Customs Kerala & others v.***

Larsen & Toubro 2015 SCC Online SC 738, supra, which deals with the issue of the levy of Service Tax on the undivisible works contracts, however, the same is not the issue in the present case and hence the above case is not relevant in the facts of the present case.

44. The Respondent has also stated that the Anti-Profiteering provision under the CGST Act and the Procedure & Methodology drafted under Rule 126 was silent on the timing of passing on of the benefit. However, there can be no doubt that the above benefit has to be passed on as soon as the Respondent avails the benefit for discharging his output tax liability by utilising the ITC. Since, the Respondent is utilising the benefit of ITC every month through his GSTR-3B Returns he should also pass on the benefit by commensurate reduction in the price every month. The Respondent cannot use two yardsticks while passing the above benefit by using the ITC every month and by claiming that his buyers would be entitled to get the same when the project would be near completion. The execution of the project under the works contract also does not entitle him to pass on the above benefit when the project would be nearing completion. In view of the above discussions the above claims of the Respondent cannot be accepted.

45. The Respondent has also submitted that while computing the above benefit the DGAP has not taken into account the rate of tax on that material which was 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/availed by him in the pre and the post-GST period and it is clear from his computation that the Respondent has got additional

benefit of 2.72% of the turnover. Further, the DGAP has also not calculated the profiteered amount by using averages. Hence, the above arguments of the Respondent are incorrect.

46. The Respondent has further submitted that the DGAP has stated that the total benefit to be passed on by him was Rs. 2,33,47,091/- and the benefit claimed to have been passed on by the Respondent was Rs. 1,27,61,725/-, and hence he had passed on benefit under the provisions of section 171 of the CGST Act, 2017 to the flat buyers. However, as per the DGAP's Report dated 12.06.2019, the total benefit to be passed on by the Respondent was Rs. 2,58,80,927/-, and the amount of Rs. 2,33,47,091/- pertained only to the 712 Residential flat buyers. Thus, the claim of Respondent that the DGAP has stated that the total benefit to be passed on by him was Rs. 2,33,47,091/- is incorrect. Further, the DGAP has not verified the benefit of Rs. 1,27,61,725/- claimed to have been passed on by the Respondent to 712 buyers as has been mentioned in the Table-D. The DGAP has also not verified an amount of Rs. 13,95,975/- which the Respondent has claimed to have passed on in respect of the commercial shops. The Respondent has also not produced any evidence during the course of the proceedings despite clear directions from the Authority nor he has attended the personal hearings afforded to him on 03.07.2019 and 16.07.2019 to prove that he has passed on the above amount as benefit of additional ITC. Therefore, there is no ground to accept his above claims. Accordingly, the above amount of Rs. 1,27,61,725/- and an amount of Rs. 13,95,975/- (Total of Rs. 1,41,57,700/-) cannot be treated to have been passed on by the

Respondent to his buyers and hence the same cannot be allowed to be adjusted against the ITC benefit.

47. The Respondent has also contended that he had passed on the benefit of ITC on adhoc basis @ Rs. 32.80 per sq. ft. to the Residential flat buyers and @ Rs. 107 per sq. ft. to the commercial shop buyers however, he has neither submitted the details of his above computation nor he has submitted the details of the credit notes or the tax invoices or cheques through which the above benefit has been passed on. His above claims have also not been verified by the DGAP in his Report. Therefore, there is no reliable and cogent evidence available on record due to lack of which the above claims of the Respondent cannot be accepted.

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

49. The Respondent has also contended that the DGAP had calculated the profiteered amount as Rs. 2,33,47,091/- whereas he had passed on an amount of Rs. 1,27,61,725/-. He has further stated that as he has already passed on the benefit of 1.50% to the buyers of the project, the same has also been considered in the DGAP's Report. However, in the DGAP's Report dated 12.06.2019, the DGAP has stated that the total benefit to be passed on by him was Rs. 1,27,61,725/-

2,58,80,927/-, and the amount of Rs. 2,33,47,091/- pertained only to the 712 Residential flat buyers. Thus, the claim of Respondent that the DGAP has stated that the total benefit to be passed on by him was Rs. 2,33,47,091/- is incorrect. Further, perusal of 39 ledger accounts of the buyers which have been submitted by the Respondent to the DGAP shows that there is no evidence to suggest that he had passed on the benefit of Rs. 1,27,61,725/- to the 712 home buyers and Rs. 13,95,975/- to the 53 commercial buyers on account of ITC as there is no such entry in the ledger accounts of these buyers. A typical entry of Rs. 13,469/- made in the ledger account on 01.05.2019 in respect of one Mr. Amit Rajoria, who has been allotted unit No. D-004 in the above project by the Respondent, reads as "Receipt Ref. CRMCNOV/00020/19-20 (12,471+ Tax 998.00)" which shows that nowhere it has been mentioned that this amount has been transferred on account of ITC benefit. Perusal of the copies of the ledger accounts of the other house buyers to whom the Respondent has claimed to have passed on the benefit of ITC also shows that the same entry has been made in all such cases on 01.05.2019. By no stretch of imagination this entry can be construed to have been made on account of passing on the benefit of ITC, therefore, the above amount cannot be taken to have been passed on account of the ITC benefit, hence, the contention of the Respondent that he had passed on the full benefit of ITC is not correct and therefore, the same cannot be accepted.

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 price, in case of any tax rate reduction and/or incremental benefit of ITC which has become

available to them due to sacrifice made by the State and the Central Govt. from their own tax kitty to provide accommodation to the vulnerable section of society under the Affordable Housing Scheme. The method of interpretation of this provision has been given in the text of Section 171 of the CGST Act, 2017 itself. We also observe that the said provision clearly links profiteering to be a function of each supply of goods or services or both and hence, profiteering needs to be computed at the level of each tax invoice. From a plain reading of Section 171 of the Act *ibid*, it is amply clear that the total quantum of profiteering by a registered person is the sum total of all the benefits that stood denied to each of the recipients/consumers individually. Therefore, the Respondent is under legal obligation to pass on the benefit of ITC to his buyers and he cannot be allowed to appropriate the same.

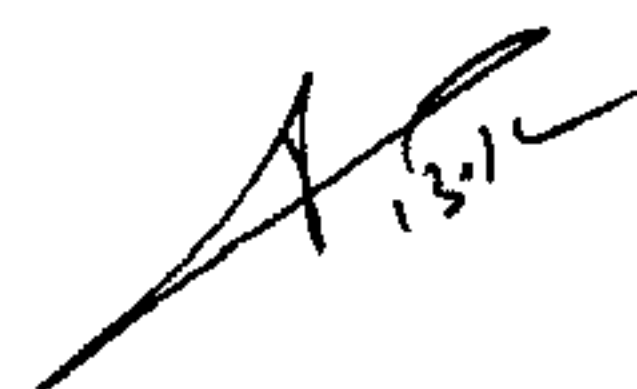
51. Based on the above facts it is clear that the ITC as a percentage of the turnover that was available to the Respondent during the pre-GST period from April, 2016 to June, 2017 was 3.17% and during the post-GST period from July, 2017 to December, 2018, it was 5.89% as per Table B *supra* and hence it is established that the Respondent has benefited from the benefit of additional ITC to the extent of 2.72% [5.89% (-) 3.17%] of the turnover. Since, the above computations made in Table B have been done on the basis of the Returns filed by the Respondent as well as the information supplied by him therefore, the same can be relied upon.

52. It is also clear from the record that the Central Government, on the recommendation of the GST Council, had levied 18% GST with

effective rate of 12% in view of 1/3rd abatement on value on the construction service, vide Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 which was reduced in the case of affordable housing from 12% to 8%, vide Notification No. 1/2018-Central Tax (Rate) dated 25.01.2018. Accordingly, the DGAP has computed the profiteered amount by comparing the applicable tax rate and ITC available in the pre-GST period when only VAT@ 4.50% was payable with (1) the post-GST period from 01.07.2017 to 24.01.2018, when the effective GST rate was 12% and (2) with the GST period from 25.01.2018 to 31.12.2018, when the effective GST rate was 8%. Accordingly, the DGAP has calculated the profiteered amount or the benefit to be passed on for the period from 01.07.2017 to 24.01.2018, as Rs. 66,70,369/- for the residential flats and commercial shops, which includes 12% GST on the base profiteered amount of Rs. 59,55,687/-. He has also computed the amount of benefit of ITC or the profiteered amount that needs to be passed on by the Respondent to his recipients during the period from 25.01.2018 to 31.12.2018 as Rs. 1,92,10,558/- which includes 12% GST on commercial shops and 8% GST on residential flats, on the base profiteered amount of Rs. 1,77,33,544/-. Therefore, the total benefit of ITC which is required to be passed on during the period from 01.07.2017 to 31.12.2018, comes to Rs. 2,58,80,927/- which includes GST @ 12% or 8% on the base profiteered amount of Rs. 2,36,89,231/- as per Table C of the above Report. The home buyer and unit no. wise break-up of this amount has been given by the DGAP vide Annexure-12 of his Report. This amount does not include profiteering pertaining to the Applicant No. 1 as he had not bought any flat or commercial shop in the Respondent's

present project. Since, the above tabulated calculations have been prepared on the basis of the information reflected in the Returns filed by the above Respondent and the details submitted by him hence, the computations made are taken to be correct and accordingly the profiteered amount is determined as Rs. 2,58,80,927/- as per the details mentioned above in terms of the provisions of Rule 133 (1) of the CGST Rules, 2017.

53. In view of the above facts this Authority under Rule 133 (3) (a) of the CGST Rules, 2017 orders that the Respondent shall reduce the prices to be realized from the buyers of the flats commensurate with the benefit of ITC received by him as has been mentioned in detail in the preceding paras of this Order. As per the provisions of Rule 133 (1) (b) of the CGST Rules, 2017, it is further ordered that the Respondent shall refund the above profiteered amount to the flat buyers as per the details given by the DGAP in Annexure-12 without taking in to account the benefit which he has claimed to have passed on. However, no benefit is to be passed on to the Applicant No. 1 as he had not bought any flat or commercial shop in the Respondent's present project. The above amount shall be passed on by the Respondent along with interest @18% PA payable from the date from which the excess amount was collected by the Respondent from the buyers till the date of its payment within a period of 3 months from the date of this order failing which the same shall be recovered by the concerned Commissioner CGST/SGST and paid to the eligible house buyers as per their entitlement as per the provisions of CGST/SGST Acts.



54. Since, the DGAP has carried out the present investigation till 31.12.2018 only any further benefit of additional ITC which might accrue to the Respondent shall also be passed on by him to the eligible buyers. The Commissioner CGST/SGST shall ensure that the above benefit is passed on by the Respondent to his recipients as per the provisions of Section 171 of the CGST Act, 2017. In case if the above benefit is not passed in future any other buyer shall be at liberty to approach the Haryana State Screening Committee to launch fresh proceedings against the Respondent as per Section 171 of the CGST Act, 2017.

55. It is also evident from the above narration of facts that the Respondent has denied benefit of ITC to the buyers of the flats and the shops being constructed by him in his Project 'Orchard Avenue 93' 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 19.06.2019 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.

56. The Authority as per Rule 136 of the CGST Rules 2017 directs the Commissioners of CGST/SGST Haryana to monitor this order

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

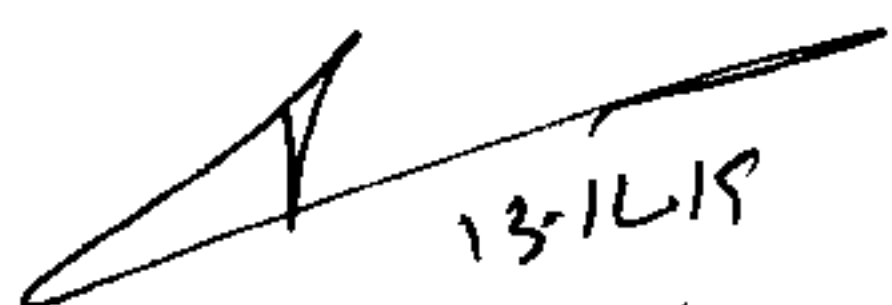
57. A copy each of this order be supplied to both the Applicants, the Respondent, Commissioners CGST/SGST Haryana as well as the Principal Secretary (Town & Planning), Government of Haryana for necessary action. File be consigned after completion.

Sd/-
(B. N. Sharma)
Chairman

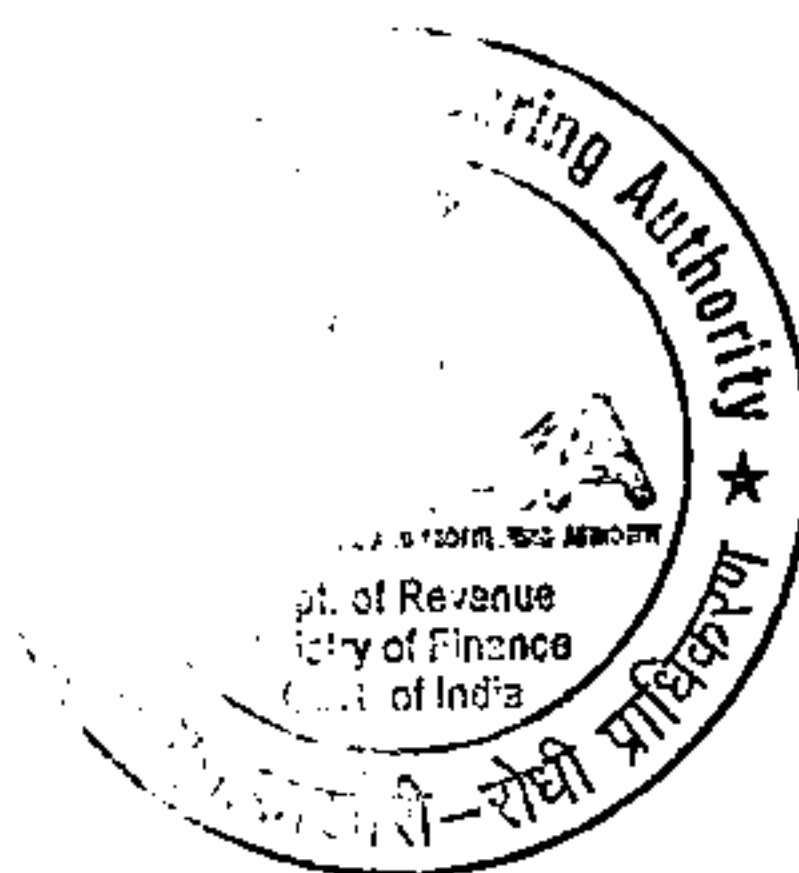
Sd/-
(J. C. Chauhan)
Technical Member

Sd/-
(Amand Shah)
Technical Member

Certified copy


13.12.19

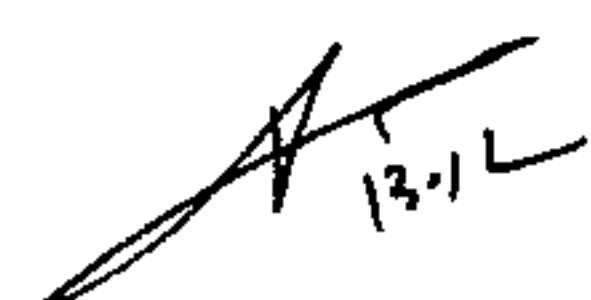
(A. K. Goel)
Secretary, NAA



File No. 22011/NAA/48/SignOrchard/2019
Copy To:-

Dated: 13.12.2019

1. M/s. Signature Builders Pvt. Ltd., Unit No. 1309, 13th floor, Dr. Gopal Das Bhawan, 28, Barakhamba Road, Connaught Place, New Delhi-110001
2. Sh. Abhishek, House no. 62, Ward No. 9, behind post office, Julana, Jind, Haryana-126101
3. The Commissioner of State Tax, Vanijya Bhavan, Plot No. 1-3, Sector-5, Panchkula, Haryana- 134151,
4. The Commissioner, CGST Gurugram, Plot no. 36 & 37, Sector-32, Gurugram, Haryana-122001,
5. Principal Secretary to Govt. of Haryana, Town & Country Planning Department, Plot No. 3, Sec-18A, Madhya Marg, Chandigarh-160018,
6. Director General Anti-Profiteering, Indirect Taxes & Customs, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.
7. NAA Website/Guard File.


13.12.19

