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

Case No.	78/2019
Date of Institution	25.06.2019
Date of Order	24.12.2019

In the matter of:

1. Shri Potnoor Naveen, B 503, B Wing, Gokuldham, Plot No. 3, Sec-35D, Kharghar, Navi Mumbai-410210.
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 Caroa Properties LLP, Godrej One, 5th floor, Pirojshanagar, Eastern Express Highway, Vikhroli (East), Mumbai-400079.

Respondent

Quorum:-

Sh. B. N. Sharma, Chairman

Sh. J. C. Chauhan, Technical Member

Sh. Amand Shah, Technical Member

Present:-

1. Sh. Potnoor Naveen, the Applicant No. 1 in person.
2. None for the Applicant No. 2.
3. Sh. Girish Goenka, Company Representative, Sh. Sharavanan Iyer, Company Representative, Sh. Narendra Singhvi, Advocate, Ms. Disha Jain Bhandari, Advocate, Sh. Tarun Rehan, CA, Sh. Kapil Sharma, Advocate and Sh. Gagan Gugnani, CA for the Respondent.

ORDER

1. The present Report dated 25.06.2019 and the supplementary Report dated 07.10.2019 has been received from the Applicant No. 2 i.e. the Director General of Anti-Profiteering (DGAP) after detailed investigation under Rule 129 (6) of the Central Goods & Service Tax (CGST) Rules, 2017. The brief facts of the case are that the Applicant No. 1 had filed an application dated 12.10.2018 before the Standing Committee on Anti-profiteering, under Rule 128 (1) of the CGST Rules, 2017 and submitted that he had purchase a flat in the Respondent's project "Godrej City Panvel Phase-I" situated at Khanvale, Panvel, Raigarh-410206 and alleged that the Respondent

had not passed on the benefit of input tax credit to him by way of commensurate reduction in price of the flat, in terms of Section 171 of the CGST Act, 2017.

2. The above reference was examined by the Standing Committee on Anti-profiteering and vide minutes of its meeting dated 13.12.2018 it had forwarded the same to the DGAP for detailed investigation under Rule 129 (1) of the above Rules.

3. The DGAP on receipt of the application had issued notice dated 15.01.2019 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 the price and if so to suo moto determine the quantum there of and indicate the same in his reply to the notice as well as furnish all the supporting documents. The Respondent was also given an opportunity to inspect the non-confidential evidences/information submitted by the above Applicant. The Respondent availed this opportunity and inspected the documents. The DGAP, vide e-mail dated 14.06.2019, had also given the Applicant No. 1 an opportunity to inspect the non-confidential evidences/information submitted by the above Respondent. The Applicant No. 1, vide e-mail dated 17.06.2019, had submitted that he had been residing in Mumbai and it would be extremely difficult for him to visit the office of DGAP. Thus, vide-e-mail dated 20.06.2019, the DGAP provided him the copies of the non-confidential documents submitted by the Respondent.

4. The DGAP had sought extension of time for completing the investigation which was extended by this Authority vide its order dated

19.03.2019 in terms of Rule 129 (6) of the CGST Rules, 2017. The period of the investigation is from 01.07.2017 to 31.12.2018.

5. The Respondent had replied to the Notice issued by the DGAP vide various letters but had not furnished the complete and the relevant documents required for investigation. The DGAP, thus, had issued Summons under Section 70 of the CGST Act, 2017 read with Rule 132 of the above Rules on 11.06.2019 to the Respondent and asked him to appear before the Superintendent of the office of DGAP on 17.06.2019 and produce the relevant documents. In response, the Authorised Representative of the Respondent had appeared on 17.06.2019 and submitted partial documents and sought one week's time to submit the remaining documents.

6. The Respondent has submitted his replies vide letters/e-mails dated 29.01.2019, 12.02.2019, 14.05.2019, 11.06.2019, 14.06.2019, 17.06.2019, 18.06.2019, 19.06.2019, 20.06.2019 and 21.06.2019 vide which he has submitted that he was engaged primarily in the business of real estate construction, development and other related activities. He has also furnished the status of various projects undertaken and developed by him as is given in the Table- 'A' below:-

Table-'A'

Project	Launch Period	Saleable Area (in sq. ft.)	Number of Units
Godrej City Panvel (Phase-I)	Pre-GST regime	6,96,969	560 - Residential 8 – Commercial
Golf Meadows Godrej City, Panvel (Phase-II)	GST regime	5,38,988	524-Residential
Phase-III	Yet to be launched However, construction of EWS units and common area had started.	4,98,976	Under Approval. Not launched yet.
EWS Units		3,84,092	833-Residential
Commercial Project		3,66,103	60-Commercial
Total		**24,85,128**	---

7. The Respondent has also stated that he was undertaking two projects, namely, "Godrej City Panvel Phase-I" and "Golf Meadows Godrej City, Panvel (Phase-II)" which were separately registered under the Real Estate Regulatory Authority (RERA). Though the present project was launched in September, 2014, the Respondent has received commencement certificate for the project in March, 2017, and the project "Golf Meadows Godrej City Panvel (Phae-II)", was launched in October, 2018. He has further stated that the number of units booked in the present project as on 30.06.2017, was 380 and was 493, as on 31.12.2018. Further, the Respondent was also undertaking construction of EWS units which was currently not registered under the RERA. The Respondent was also incurring some expenses in respect of Phase-III of the project which was yet to be launched.

8. He has also submitted that he has only received advances during the pre-GST period and has not raised any tax invoice on his customers and the he has paid Service Tax on the advances so received during the pre-GST period. The Respondent has also availed credit of Service Tax and VAT paid on the advances received under Section 142 (11) (c) of the CGST Acts, 2017, to the tune of Rs. 1.66 Crore. The Respondent has also applied for refund of Service Tax amounting to Rs. 52.86 lakh on account of units cancelled in the post-GST regime, which was rejected by the Assistant Commissioner (Refunds), CGST, Mumbai South Commisionerate on 31.03.2019. The Respondent has then filed an appeal against the said order before the Additional Commissioner (Appeal-II), Mumbai, on 06.06.2019. It was also submitted that the CENVAT credit availed in the pre-GST regime

pertained to the projects "Godrej City Panvel Phase-I", "Golf Meadows Godrej City, Panvel (Phae-II)," and the "EWS units".

9. The Respondent has also claimed that there was no benefit on account of reduction in the rate of tax on supply of construction services. Moreover, the benefit of ITC, would be dependent upon various factors such as stage of construction and negotiations with vendors etc. and the following three factors must be taken into account for calculating the quantum of benefit:-

a. Benefit on Transitional stock carried forward in TRAN-1 Form.
b. Saving of taxes on goods/services to be purchased in the GST regime.
c. Benefit on account of reduction in prices after negotiation with his contractors.

10. It was further claimed by the Respondent that he has estimated the additional benefit which has accrued to him in the present project, based on the above factors. Accordingly, he has passed on the benefit of 3.35% of the base price, to the eligible customers of the present project by way of commensurate reduction in prices due to accrual of anticipated additional ITC under the GST regime. The Respondent has also furnished the details of the actual benefit passed on to the different categories of recipients in Table- 'B' given below:-

Table- 'B'

Category	Number of Units	Amount of ITC benefit passed on
Customers who booked units in pre-GST regime and advances were also received pre-GST	As on 30.06.2017 = 380 Less: Units cancelled in GST regime = 90 Net Units = 290 Units for which tax invoices had not been raised till now = 19 Remaining units for which benefit had been passed on = 271	3.35% has been passed to the customers of 271 units on the amount billed in GST regime. Further, Respondent has passed on additional benefit to the tune of extra GST levied vis-a-vis Service Tax on advances received in earlier regime but billed in GST regime (around 3% to 4%). Respondent would pass on the benefit on 19 units as and when tax invoice would be raised.
Customers who booked units during 01.07.2017 to 31.03.2018	145	Respondent has passed on GST benefit of 6% to the customers
Customers who booked units after 31.03.2018	58	GST benefit was factored in the price at which units were booked.

11. The Respondent has also mentioned that the supplies which were fully provided in the GST regime, would not attract the Anti-Profiteering provisions. He has also cited the Order of this Authority dated 24.05.2019 passed in the case of ***Hermeet Kaur Bakshi v. Conscient Infrastructure Pvt. Ltd.,*** wherein it was held that in case, there was no comparative pre-GST ITC which was availed or utilized, the question of profiteering would not arise. The service rendered in the said case (construction of the project) was not in existence during the pre-GST regime and the project was launched only after the implementation of the GST. Applying the same ratio, the Respondent has argued that the project "Golf Meadows Godrej City, Panvel" which was launched in September, 2018 in the GST regime, would be outside the ambit of Anti-Profiteering provisions.

12. The Respondent has also contended that in the present case, the Applicant No. 1 has filed the complaint under Section 171 of the CGST Act, 2017 on the ground that the Respondent has not passed on the benefit on account of reduction in the GST rate on "Paints and

Varnishes" from 28% to 18%. In terms of the said Section, the benefit was required to be passed on in the event of any reduction in rate of tax on any outward supply of goods or services or any additional benefit of ITC. However, under GST, all the inputs and input services were creditable and accordingly, the GST component on procurement did not form a part of the cost of construction. As a result, the change in the rate of tax on inputs did not have any impact on cost. There was neither any additional ITC available to the Respondent on account of change in the rate of GST on "Paints and Varnishes" from 28% to 18% nor was there any reduction of GST rate on outward supply of the Respondent.

13. The Respondent has also submitted that the Applicant No. 1 has booked the unit in the GST regime itself and therefore, the price charged by the Respondent has already factored in the GST benefit and other market factors. The Respondent has also provided GST benefit of 6% which was duly mentioned in the cost sheets of his customers. Accordingly, the complaint was vexatious and was not covered by the Anti-Profiteering provisions under the GST. The Respondent has also contended that the comparison of ratio of ITC to turnover for the pre-GST period with the post-GST period was not the correct method for calculation of profiteered amount for the reason that under the real estate sector, there was no correlation of the turnover and the cost of construction of a project. Moreover, the additional ITC in the hands of the Respondent was such ITC on goods or services which was not available earlier. He has further contended that the approach adopted for calculating the additional benefit of ITC that has accrued to the Respondent, has considered the change in the

rate of tax on input goods and services whose credit was available earlier also and has not taken into account the tax cost which was earlier blocked in the hands of the Respondent. Hence, the approach adopted for comparison of the ratio of ITC and turnover in the pre-GST and post-GST periods, was not the correct approach. Further, the Respondent has himself computed the benefit of ITC based on the methodology adopted by this Authority while determining profiteering in recent orders. The calculation has been furnished in Table- 'C' below:-

Table- 'C'

(Rs. In Cr.)

Sl. No.	Particulars	Pre-GST (Apr, 14 to Jun, 17)	Post-GST (Jul, 17 to Dec, 18)
A	Cenvat Credit of Service Tax Paid on Input Services	2.48	
B	ITC of GST Availed (Net of reversal as per GSTR-3B)		14.59
C	Total Turnover as per Home Buyer List	40.36	189.89
D	Total Saleable Area (In Sq. ft.)	0.07	0.07
E	Total Area Sold relevant to turnover as above	0.05	0.06
F	ITC Relevant to Turnover[A*(E/D)] OR [B*(E/D)]	1.68	12.79
G	Ratio of ITC to Turnover[F/C]	4.16%	6.73%
PROFITEERING		2.58%	

14. In the light of the above calculations, it was submitted by the Respondent that in case the above methodology of calculation was adopted for the present project, the additional ITC that has accrued to the Respondent would come to 2.58%. It was also submitted that the Respondent has already computed 3.35% ITC benefit for the above project. The Respondent has also stated that in the absence of specific procedure and mechanism for calculation of profiteering, the proceedings were arbitrary and liable to be dropped. He has further

stated that the investigation could not go beyond the application dated 12.10.2018, of the Applicant No. 1.

15. The Respondent has also submitted the following documents/information to the DGAP:-

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

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

(c) Copy of Tran-1 Return for transitional credit along with TRAN Verification order.

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

(e) Copies of all demand letters and sale agreement/contract issued in the name of the Applicant No. 1.

(f) Details of applicable tax rates, pre-GST and post-GST.

(g) Copies of Balance Sheets (including all annexures and profit & loss account) for FY 2016-17& 2017-18.

(h) Copy of Electronic Credit Ledger for the period from 01.07.2017 to 31.12.2018.

(i) CENVAT Credit/ITC register for the period from April, 2016 to December, 2018.

(j) Details of turnover, output tax liability, GST payable and ITC availed.

(k) List of home buyers in the present project.

(l) Reconciliation of turnover reported in the GSTR-3B returns with that in the list of home buyers.

16. The Respondent had also requested the DGAP to treat all the data/information furnished by him as confidential, in terms of Rule 130 of the above Rules except RERA certificate (Phase-1 and Phase-2), complaint letter and invoices, and the SOA & cost sheet issued to the Applicant No. 1.

17. The DGAP upon examining the application, the various replies of the Respondent and the documents/evidences on record has observed that the main issues required to be addressed were:-

(i) Whether there was benefit of reduction in the rate of tax or ITC on the supply of construction service by the Respondent, on implementation of GST w.e.f. 01.07.2017 and if so,

(ii) Whether such benefit was passed on by the Respondent to his recipients, in terms of Section 171 of the CGST Act, 2017.

18. The Respondent has also submitted a copy of the agreement for sale dated 07.03.2018, and the demand letters and payment receipts for the sale of Flat No. D0403 to the Applicant No. 1. He has also furnished the details of amounts and taxes paid by the Applicant No. 1 to the Respondent in as per Table-'D' given below:-

Table-'D' (Amount in Rs.)

S. No.	Payment Stage	Due Date	Basic %	BSP	Other Charges	GST		Total
						BSP	Other Charges	
1	Before registration of the agreement	19.02.2018	10%	6,34,211	36,718	76,105	6,610	7,53,644
2	Immediately after execution and registration of the agreement	10.04.2018	20%	12,68,421	73,438	1,52,210	13,219	15,07,288
3	On completion of plinth of the apartment/flat's building/wing	10.04.2018	15%	9,51,316	55,078	1,14,158	9,914	11,30,466
4	On completion of	04.05.2018	5%	3,17,105	18,360	38,052	3,305	3,76,822

	2nd floor slab							
5	On completion of 5th floor slab	13.08.2018	5%	3,17,105	18,360	38,052	3,305	3,76,822
6	On completion of 8th floor slab	28.09.2018	5%	3,17,105	18,360	38,052	3,305	3,76,822
7	On completion of 11th floor slab	09.12.2018	5%	3,17,105	18,360	38,052	3,305	3,76,822
8	On completion of terrace floor slab	23.12.2018	5%	3,17,105	18,360	38,052	3,305	3,76,822
9	Completion of walls of said apartment	Not demanded as on 31.12.2018	4%	2,53,684	14,688			
10	Completion of internal plaster, floorings, doors and windows of said apartment and lift wells upto floor level of said apartment		5%	3,17,105	18,360			
11	Completion of sanitary fittings, staircases and lobbies upto floor level of said apartment and external plumbing and external plaster, terraces with waterproofing of the building or wing in which the said apartment was located		5%	3,17,105	18,360			
12	Completion of elevation of the building or wing in which the said apartment was located and completion of lifts		10%	6,34,210	36,720			
13	Completion of water pumps, electrical fittings, electro mechanical and environment requirements, entrance lobby/s, plinth protection, paving of areas appertain and all other requirements as might be prescribed in the agreement of the said apartment, and Offer of possession of apartment		6%	3,80,530	22,026			
Total			**100.00%**	**63,42,107**	**3,67,188**	**5,32,738**	**46,268**	**52,75,508**

19. The DGAP has also observed that the Respondent has claimed that he has estimated the additional benefit which has accrued to him on the basis of various factors and accordingly, passed on the benefit of 3.35% of the billed amount in the GST regime, to the eligible customers. He has also stated that despite repeated requests, the Respondent has not submitted the details of benefit passed on to the

home buyers and thus, his claim has remained unsubstantiated. He has further stated that as the amount of benefit required to be passed on by the Respondent needed to be arrived at in terms of Rule 129 (6) of the CGST Rules, 2017, the ITC available to the Respondent and the taxable amount received by him from the Applicant No. 1 and other recipients post implementation of GST, has to be taken into account to find out the benefit of additional ITC.

20. The DGAP has also intimated that Respondent has contended that the project "Golf Meadows Godrej City, Panvel" which was launched in September, 2018, i.e. in the GST regime should have been kept outside the ambit of anti-profiteering provisions, in terms of the Order of this Authority dated 24.05.2019, passed in the case of ***Hermeet Kaur Bakshi v. Conscient Infrastructure Pvt. Ltd.*** In this regard, the DGAP has submitted that the present proceedings were initiated with reference to the present project which was launched in September, 2014, i.e. in the pre-GST regime and no reference has been received from the Standing Committee on Anti-profiteering with regard to the project "Golf Meadows Godrej City, Panvel" and hence the said project has been kept outside the ambit of this investigation by the DGAP.

21. The Respondent's another contention was that the Applicant No. 1 has filed the complaint under Section 171 of the CGST Act, 2017 on the ground that the Respondent has not passed on the benefit on account of reduction in the GST rate on "Paints and Varnishes" from 28% to 18%. In this regard, the DGAP has intimated that the Applicant No. 1 might not possess all the technical and legal knowledge required to examine the applicability of various legal provisions and the

Standing Committee on Anti-profiteering was of the opinion that the benefit of additional ITC was not passed on by the Respondent to his recipients.

22. The DGAP has also stated that the Respondent has also contended that the comparison of ratio of ITC to turnover for the pre-GST and the post-GST periods was not the correct mechanism for calculation of profiteered amount. The DGAP has also claimed that this contention of the Respondent was not correct for the reason that there was a direct relation between the ITC claimed and the output tax to be paid, as the use of ITC could only be towards discharge of output tax liability which was computed on the turnover of the Respondent and hence, the approach adopted by him was in line with the provisions of the CGST Act, 2017 read with the Chapter XV of the above Rules.

23. The Respondent has also self-computed the benefit of ITC as 2.58% of his turnover, however, the DGAP has contended that the same appeared to suffer from the following discrepancies:-

(a) The pre-GST period considered by the Respondent was from April, 2014 to June, 2017, but there was no consideration received during the period from April, 2016 to June, 2017 and therefore, the period in which both the indicators (ITC as well as the turnover) existed was only during the period of April, 2014 to March, 2016.

(b) The CENVAT or the ITC considered availed by the Respondent included specific credit for the project and common credit

attributed to the project in the ratio of expenses incurred on the project. It was not the proper way to allocate the common credit which should be apportioned on the basis of the ratio of saleable area.

(c) The area sold relevant to turnover adopted by the Respondent included those customers also from whom neither any consideration had been received nor any demand had been raised by the Respondent, whereas the total turnover included only those customers on whom demands had been raised/ consideration had been received.

24. The Respondent has also claimed that in the absence of specific procedure and mechanism for calculation of profiteering, the proceedings were arbitrary and liable to be dropped and that the investigation could not travel beyond the application filed by the Applicant No. 1. In this regard, the DGAP has stated that the Authority, being statutorily empowered to determine the methodology and procedure for determining whether the reduction in rate or benefit of ITC had been passed on by the supplier to the recipient by reducing the prices, might take a view on the issue raised by the Respondent.

25. The DGAP has 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 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".

26. Thus the DGAP has claimed that the ITC pertaining to the unsold units may not fall within the ambit of the current investigation and the Respondent would be required to recalibrate the selling prices 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.

27. The DGAP has also submitted that prior to 01.07.2017, i.e., before the GST was introduced, the Respondent was eligible to avail credit of Service Tax paid on the input services only (no credit was available in respect of Central Excise Duty and VAT paid on the inputs and VAT/WCT paid to sub-contractors). Further, post-GST, the Respondent could avail ITC of GST paid on all the inputs and the input services including the sub-contracts. From the information submitted by the Respondent for the period from April, 2014 to December, 2018, the DGAP has furnished the details of the input tax credit availed by the Respondent, his turnover from the present project and the ratio of ITC to turnover, during the pre-GST period (April, 2014 to March, 2016) and the post-GST period (July, 2017 to December, 2018) in the Table-'E' given below:-

Table-'E' (Amount in Rs.)

S. No.	Particulars	April, 2014 to March, 2015	April, 2015 to March, 2016	Total (Pre-GST)	July, 2017 to March, 2018	April, 2018 to December, 2018	Total (Post-GST)
(1)	(2)	(3)	(4)	(5) = (3)+(4)	(6)	(7)	(8) = (6)+(7)
1	Credit of Service Tax Paid on Input Services (A)	51,18,288	43,71,851	94,90,139	-	-	-
2	ITC of GST Availed (B)	-	-	-	4,94,26,835	8,19,78,649	13,14,05,484
3	Turnover from List of Home buyers (net of cancellation) (C)	28,07,35,805	2,98,00,244	31,05,36,049			1,89,79,84,692
4	Total Saleable Carpet Area (Excluding Balcony Area) (in SQF) (D)			6,96,969			6,96,969
5	Total Sold Carpet Area (Excluding Balcony Area) (in SQF) relevant to turnover (E)			3,52,105			5,83,022
6	ITC relevant to Area Sold [(F)= (A)*(E)/(D)] or [(F)= (B)*(E)/(D)]			47,94,367			10,99,22,088
	Ratio of ITC to Turnover [(G)=(F)/(C)*100]			**1.54%**			**5.79%**

28. The DGAP has also stated that in the Table given above, the period considered in the pre-GST regime was from April, 2014 to March, 2016 as the Respondent had received consideration as well as availed CENVAT Credit of Service Tax during this period whereas during the period from April, 2016 to June, 2017, though the Respondent has availed credit, he has not received any consideration. Therefore, the ratio of ITC to turnover during the period from April, 2016 to June, 2017 would be distorted and not comparable.

29. The DGAP has further stated that from the above Table, it transpired that the ITC as a percentage of the turnover that was available to the Respondent during the pre-GST period from April, 2014 to March, 2016 was 1.54% and during the post-GST period from July, 2017 to December, 2018, it was 5.79% and therefore, post-GST the Respondent has benefited from additional ITC to the tune of 4.25% [5.79% (-) 1.54%] of the turnover. Accordingly, the DGAP has examined the profiteering by comparing the applicable tax rate and the ITC available in the pre-GST period (April, 2014 to March, 2016) when Service Tax @3.7%~4.5% and VAT@1% was payable (total tax rate of 4.7%~5.5%) with the post-GST period (July, 2017 to December, 2018) when the effective GST rate was 12% (GST @18% along with 1/3rd abatement for land value) on construction service, imposed vide Notification No. 11/2017-Central Tax (Rate), dated 28.06.2017. The DGAP has accordingly, on the basis the figures contained in Table-'E' above, has furnished the comparative figures of the ratio of ITC availed/available to the turnover in the pre-GST and the post-GST periods as well as the turnover, the recalibrated base price and the excess realization (profiteering) during the post-GST period, in the Table-'F' given below:-

Table-'F' (Amount in Rs.)

S. No.	Particulars		July, 2017 to December, 2018 (Post- GST Period)
1	**Period**	**A**	**Total**
2	Output GST rate (%)	B	12%
3	Ratio of CENVAT credit/ ITC to Total Turnover as per table - 'E' above (%)	C	5.79
4	Increase in ITC availed post-GST (%)	D= 5.79% *less*1.54%	4.25
5	**Analysis of Increase in ITC:**		
6	Base Price raised during July, 2017 to December, 2018 (Rs.)	E	1,89,79,84,692
7	GST raised over Base Price @12% (Rs.)	F= E*B	22,77,58,163
8	Total Demand raised	G=E+F	2,12,57,42,855
9	Recalibrated Base Price	H= E*(1-D) or 95.75% of E	1,81,73,20,343
10	GST @12%	I = H* B	21,80,78,441
11	Commensurate demand price	J = H+I	2,03,53,98,784
12	**Excess Collection of Demand or Profiteered Amount**	**K= G–J**	**9,03,44,071**

30. From the Table given above, the DGAP has claimed that the additional ITC of 4.25% of the turnover should have resulted in commensurate reduction in the base prices as well as cum-tax prices. Therefore, in terms of Section 171 of the CGST Act, 2017, the benefit of such additional ITC was required to be passed on by the Respondent to the recipients.

31. The DGAP has also contended that on the basis of the aforesaid CENVAT/ITC availability in the pre and post-GST periods and the details of the amount collected by the Respondent from the Applicant No. 1 and the other home buyers during the period from 01.07.2017 to 31.12.2018, the amount of benefit of ITC that needed to be passed on by the Respondent to the recipients, came to Rs. 9,03,44,071/- which included 12% GST on the base profiteered amount of Rs.

8,06,64,349/-. The DGAP has also furnished the home buyer and unit no. wise break-up of the said amount. This amount included Rs. 2,23,696/- (including GST on the base profiteered amount of Rs. 1,99,729/-) which was the benefit of ITC required to be passed on to the Applicant No. 1. The DGAP has also informed that the Respondent has supplied the construction service in the State of Maharashtra only.

32. The DGAP has also mentioned that the above computation of profiteering was with respect to 473 home buyers, whereas the Respondent has booked 493 units till 31.12.2018, 20 customers who had booked the flats and also paid the booking amounts in the pre-GST period, had not paid any consideration during the post-GST period from 01.07.2017 to 31.12.2018 (period under investigation). Therefore, if the ITC in respect of these 20 units was considered to calculate profiteering in respect of 473 units where payments have been received after implementation of GST, the ITC as a percentage of turnover might be erroneous. Therefore, the benefit of ITC in respect of these 20 units might be calculated when the consideration was received from such units by taking into account the proportionate ITC in respect of such units.

33. The DGAP has thus submitted that the benefit of additional ITC to the tune of 4.25% of the turnover, has accrued to the Respondent post-GST and the same was required to be passed on by the Respondent to the Applicant No. 1 and other recipients. Section 171 of the CGST Act, 2017 appeared to had been contravened by the Respondent, in as much as the additional benefit of ITC @ 4.25% of the base price received by the Respondent during the period from 01.07.2017 to

31.12.2018, has not been passed on by the Respondent to the Applicant No. 1 and the other recipients. He has also stated that on this account, the Respondent has realized an additional amount of Rs. 2,23,696/- from the Applicant No. 1 which included both the profiteered amount @ 4.25% of the base price and GST on the said profiteered amount. Further, the DGAP's investigation has revealed that the Respondent has also realized an additional amount of Rs. 9,01,20,375/- which included both the profiteered amount @ 4.25% of the base price and the GST on the above profiteered amount, from 472 other recipients who were not Applicants in the present proceedings. Those recipients were identifiable as per the documents provided by the Respondent, which gave the names and addresses along with unit no. allotted to such recipients. Therefore, this additional amount of Rs. 9,01,20,375/- was required to be returned to such eligible recipients.

34. The DGAP has 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, has 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.

35. The above Report was considered by this Authority in its meeting held on 02.07.2019 and it was decided to hear the Applicants and the Respondent on 17.07.2019. A show cause notice dated 02.07.2019 was issued to the Respondent asking him to reply why the Report dated 25.06,2019 furnished by the DGAP should not be accepted and his liability for profiteering under Section 171 of the CGST Act, 2017

should not be fixed. He was also asked to explain why penal provisions should not be invoked against him under Section 29, 122-127 of the CGST Act, 2017 read with Rule 21 and 133 of the CGST Rules, 2017

36. Seven personal hearings were accorded to the parties on 17.07.2019, 06.08.2019, 02.09.2019, 06.09.2019, 20.09.2019, 29.10.2019 and 07.11.2019. During the course of the hearing, Sh. Potnoor Naveen, the Applicant No. 1 appeared in person; None appeared for the Applicant No. 2 and the Respondent was represented by Sh. Girish Goenka, Company Representative, Sh. Sharavanan Iyer, Company Representative, Sh. Narendra Singhvi, Advocate, Ms. Disha Jain Bhandari, Advocate, Sh. Tarun Rehan, CA, Sh. Kapil Sharma, Advocate and Sh. Gagan Gugnani, CA.

37. The Applicant No. 1 has filed his written submissions on 17.07.2019 vide which he has submitted that the Respondent's submissions dated 12.02.2019 to the DGAP vide which he has submitted that "he had duly passed on the amount of benefit arising on account of ITC in each demand note raised to the customers and that he was already passing on the benefit of 3.35% to his customers" was not in consonance with all the demand notes raised on him for payment from time to time where he was actually charged 12% GST on the base value.

38. The Respondent has filed his written submissions on 06.09.2019 vide which he has submitted the details of the units booked under the present project in different periods in a Table which is given below:-

Particulars	No. of Units	Saleable Area (sq. ft.)
A. Units booked in pre-GST regime	295	3,38,964
B. Units booked in GST regime (till 31.12.2018)	198	2,44,058
C. Units booked as on 31.12.2018 (A+B)	493	5,83,022
D. Unsold units as on 31.12.2018	75	1,13,947
E. Total Units	568	6,96,969

39. He has also submitted that there were some minor differences in comparison to the figures shared with the DGAP in his Report dated 25.06.2019 as follows:-

A. The number of units booked as on 30.06.2017 indicated the number of units on which advances had been received from customers. However, it was to be noted that only advances had been received from customers and neither agreements were entered with buyers nor any tax invoices were issued till 30.06.2017.

B. The number of units booked as on 30.06.2017 indicated units net of cancellation by customers in the pre-GST regime.

C. There were 35 customers who had paid initial token money but units had not been allocated. The customers had also not confirmed. Hence, those figures were not included in the above Table.

D. The number of units booked as on 31.12.2018 indicated units net of cancellation by customers as on 31.12.2018. Further, Number of Units booked between 01.07.2017 to 31.03.2018 were 139 and the units booked w.e.f. 01.04.2018 to 31.12.2018 were 59.

40. The Respondent has also furnished the details of the turnover of the project which is given in the below table:-

Table

(Amount in crores)

Project	Pre-GST Regime (upto 30.06.2017)		
	Advance Received but not billed till 30.06.2017	Amount Billed	Total
Godrej City Panvel Phase-I	31.01	-	31.01
Other Projects	-	-	-
Refer Para 24	-	-	28.26
Total	59.27	-	59.27
As per ST-1			59.27
Difference			0

Table

(Amount in crores)

Project	GST Regime (01.07.2017 to 31.12.2018) [1]		
	Advance Received but not billed till 31.12.2018	Amount Billed	Total
Godrej City Panvel Phase-I	3.80	185.98	189.79
Golf Meadows Godrej City, Panvel (Phase-II)	11.66	11.96	23.63
Refer Note 2[2]	-	-	1.53
Total	15.47	197.94	214.94
As per GSTR-3B			214.94
Unreconciled Difference			(0.09)

41. He has also submitted that there were some minor differences in comparison to the figures shared with the DGAP in his Report dated 25.06.2019 which were as follows:-

Miscellaneous Income	1.02
Amount received from unidentified customer	0.33
Amount pertaining to cancellation of units	0.19
Total	**1.53**

42. The Respondent has also contended that there were some cancellations of units in the pre-GST period and the total amount refunded to the customers on account of cancellation of units in the pre-GST period itself was Rs. 2.24 Crore, the adjustment of which has been taken in the Service Tax returns. He has also submitted that he has availed credit under section 142 (11) (c) of CGST Act to the tune of Rs, 1.66 Crore on the amount of Rs. 40.04 Crore. He has also added that he has also applied for refund of tax on account of units cancelled in terms of Section 142 (5) of CGST Act. The gross figure of advances for units cancelled in the GST regime for which refund was applied was Rs 16.95 Crore He has also summarized the above submissions in the Table given below:-

Table

(Amount in crores)

S. No.	Particulars	Amount (excluding tax)
A.	Gross Advance received in earlier regime	59.27
B.	Amount refunded to customers on cancellation of units in earlier regime itself and tax adjusted in ST-3 returns	2.24
C.	Net advances as per ST-3 Returns **[(A)-(B)]**	57.03
D.	Refund applied for units booked and cancelled in earlier regime	16.95

E.	Net Advances as on 30.06.2017. The above amount had been taken as credit under Section 142 (11) (c) of CGST Act through Form GST Tran-1. **[(C)-(E)]**	40.08
F.	Advances received in earlier regime but units not allocated or cancelled in GST regime	9.07
G.	Net advances for units booked in earlier regime for active units as on 31.12.2018 **[(E)-(F)]**	31.01

43. He has also furnished the details of the turnover project wise and reconciliation with statutory returns and list of the homebuyers for the present project covering turnover and other details.

44. The Respondent has also furnished the details of CENVAT credit availed during the pre-GST regime as under:-

Pre-GST regime - Cenvat Details

(In Crores)

Project	01.04.2014 to 31.03.2016	01.04.2016 to 30.06.2017	Total
Godrej City Panvel Phase-I[1]	0.95	1.37	2.32
Other Projects[2]	1.56	2.16	3.72
Total	2.51	3.53	6.04
As per ST-3 returns	2.51	3.53	6.04
Difference	-	-	-

45. The Respondent has also added that in the above Table, the amount of CENVAT credit included the specific credit for the project and the common credit. The Respondent has also maintained project wise profit and loss account and accordingly allocated expenses to the projects as per the methodology provided by Accounting Standards/ IND AS and generally accepted accounting policies. He has further submitted that the common credit has been categorised in three broad

categories on the basis of expenses allocated as per his accounting policy. Thereafter, the common credit of each category has been allocated to the present project and other projects in the ratio of saleable area.

46. He has also stated that the amount mentioned in "Other projects" included credit pertaining to the Golf Meadows Godrej City, Panvel, EWS Units, Commercial units and future projects as per the Table given below:-

GST Regime – ITC Details

Project	(In Crores) 01.04.2017 to 31.12.2018
Godrej City Panvel Phase-I[1]	13.07
Other Projects[2]	6.71
Total	19.78
As per GSTR-3B	19.78
Difference	-

He has also provided the summary of CENVAT credit for the period from October, 2014 to June, 2017 and ITC for the period from July, 2017 to December, 2018, attributable to the present project.

47. The Respondent has also claimed that he has passed on benefit of at least 3.35% to the eligible customers of the present project, by way of commensurate reduction in the prices due to expected additional ITC which has accrued to him under the GST regime. The details of actual benefit passed on to different category of customers were given by him as follows:-

Table

Category	No. of Units	Benefit Passed on till 31.12.2018	Mechanism of ITC benefit passed on to customers
A. Customers who booked units in earlier regime and advances were received	275[1]	Rs. 3,82,25,015/-	3.35% had been passed to the customers of 275 units on the amount of billing done in GST regime. Further, the Respondent had passed on additional benefit to the extent of extra GST levied vis a vis service tax on advances received in earlier regime but billed in GST regime (around 4% to 5%). Respondent would pass on the benefit on 20 units as and when tax invoices would be raised.
B. Customers who booked units from 01.07.2017 to 01.02.2018	112	Rs. 5,41,32,769/-	Respondent had passed on GST benefit of 6% to the customers. This was factored in the price at which units were booked.
Sub-Total (A+B)	**387**	**Rs. 9,23,57,785**	
C. Customer who booked units from 02.02.2018 to 31.03.2018	27	Rs. 55,14,327/-	To this category of customers, he had passed reduced amount of amount considering the price revise.
D. Customers who booked units after 31.03.2018 till 31.03.2018	59		Prices of units were fixed after considering the demand and supply factors and ITC available to Respondent.
Total units booked till 31.12.2018	493		

48. He has also submitted that there were some minor differences in comparison to the figures shared with the DGAP in his Report dated 25.06.2019 which are as follows:-.

Number of Units had been calculated as follows:

Net Units as on 30.06.2019 (after cancellation) = 295

Units for which tax invoice had not been raised till now = 20

Remaining units on which benefit passed on = 275

The Respondent has also furnished proof of passing on of the benefit to different categories of customers, on sample basis.

49. The Respondent has also contended that the Standing Committee has erred in referring the matter to the DGAP for further investigation as per Rule 128 (1) of the CGST Rules, 2017 which states as under:-

"On receipt of an application, the Standing Committee shall examine the accuracy and adequacy of the evidence provided in the application to determine whether there was prima facie evidence to support the claim of the Applicant that the benefit of reduction in the rate of tax on any supply of goods or services or the benefit of Input Tax Credit had not been passed on to the recipient by way of commensurate reduction in prices."

50. On the basis of the above Rule the Respondent has argued that the application filed by the Applicant No. 1 was only on the basis of one ground that the Respondent had not passed on the benefit on account of reduction in the GST rate on 'Paints and Varnishes' from 28% to 18% as being an input, ITC was available on the same and thus, it did not form part of the cost of construction of the Respondent. He has also submitted that the above fact could not be considered as a *prima facie* evidence to say that the Respondent had profiteered post-GST regime. As per Section 171 of the CGST Act, the benefit was required to be passed on in respect of any reduction in the rate of tax on any outward supply of goods or services or on the benefit of additional

ITC. However, under the GST regime, all the inputs and input services were creditable to the Respondent and accordingly, the GST component on procurement did not in any way, formed part of cost of construction. As a result, the change in the rate of tax on inputs did not have any impact on the cost. Thus, there was neither any additional ITC which had been made available to the Respondent on account of change in the rate of GST on Paints and varnishes from 28% to 18% nor there was reduction of GST rate on outward supply of Respondent. Thus, reduction in rate of inputs (Paints and varnishes) could not be considered to be *prima facie* evidence for alleging profiteering on the part of the Respondent.

51. The Respondent has also argued that the Applicant No. 1 had booked his unit after the enactment of the GST Acts and therefore, the price charged by the Respondent already comprised of adjustment with respect to GST benefit and other market factors. He has also passed 6% benefit to the Applicant No. 1 and other similar customers. He has further argued that the Standing Committee has erred in referring the matter to the DGAP in the absence of any accurate or adequate evidence. Therefore, the entire proceedings based on such erroneous *prima facie* conclusion were bad in law.

52. The Respondent has also submitted that the DGAP's Report could not go beyond the application submitted by the Applicant No. 1 on 12.10.2018. It was further submitted that an anti-profiteering investigation prior to the amendment made vide Notification No. 31/2019-Central Tax, dated 28.06.2019, since the DGAP's Report was dated 25.06.2019, could be initiated only on receipt of a written application from an interested party, commissioner or any other

person. In the instant case, the proceedings were initiated on the basis of an application received from the Applicant No. 1 which was only in respect of one Flat purchased by the Applicant No. 1 in the present project. Hence, the investigation could not go beyond the application and cover other customers also who had not questioned the benefit passed on to them. In this regard, reliance was placed by the Respondent on the following orders of this Authority, wherein investigation, report and final order of this Authority was only on the product for which complaint was filed in the respective cases:-

(i) ***Dinesh Mohan Bhardwaj v. M/s Vrandavaneshwree Automotive Private Limited 2018-VIL-01-NAA:*** In this case, the Applicant had filed an application alleging that the supplier did not pass on the benefit of reduced rate of tax on Honda Car having Model No. WR-V 1.2 VX MT (i-VTEC) purchased by the Applicant No. 1. The Authority in this case while holding that the supplier had not contravened the provisions of Section 171 of the CGST Act, 2017 limited its enquiry and order, only to the particular model of car.

(ii) ***Rishi Gupta v. M/s Flipkart Internet Pvt Ltd. 2018 VIL-04-NAA***: In this case, the Applicant had filed an application stating that he had paid extra amount for Godrej Interio Slimline Metal Almirah to the supplier and by not refunding the same, the supplier was resorting to profiteering in contravention of Section 171. This Authority while holding that the supplier had not contravened the provisions of Section 171 limited its order only to the particular model of almirah.

(iii) Reliance was also placed on the decision of the cases of:-

- ***Kerala State Screening Committee on Anti-Profiteering and Director General Anti-Profiteering v. M/s Pulimoottill Silks 2019 (2) TMI 296.***
- ***Kerala State Screening Committee on Anti-Profiteering and Director General of Anti-Profiteering, Central Board of Indirect Taxes & Customs v. M/s Velbon Vitrified Tiles Pvt. Ltd. 2019 (3) TMI 370.***

53. It was also submitted by the Respondent that the application in an anti-profiteering case acted as foundation and base of an investigation. In the present case, the application was received merely from Applicant No. 1 for the Flat constructed on CTS/Survey/Final Plot No. 70/1 pt, 70/2 pt, 76 pt, 69 pt, 78 pt, 68 pt, 81/2 pt, 40 pt, and 72 pt at Khanavale, Panvel, Raigarh – 410206. Hence, the investigation could not go beyond the application and cover other customers also who had not questioned the benefit passed on to them.

54. The Respondent has further submitted that the DGAP could not *suo moto* assume jurisdiction with regard to other customers of the Respondent, on receipt of reference from the Standing Committee to conduct a detailed investigation in the matter of Applicant No. 1. The DGAP could also not exceed his jurisdiction by submitting his findings on other unit buyers and recipients who had not filed any application without any reference from the Authority in this regard. He has further added that an application filed by dissatisfied Applicant No. 1 might be compared to a show cause notice for a tax proceeding wherein the assesse was required to show as to why tax, interest and penalty, etc. should not be levied and collected from him. He has also pleaded that

it was settled principle of law that an order adjudicating a show cause notice could not travel beyond the scope of a show cause notice. In this regard reliance was placed by the Respondent on the case of ***Toyo Engineering India Limited v. CC, Mumbai 2006 (201) E.L.T. 513 (S.C.)*** wherein the Hon'ble Supreme Court has held that the department could not travel beyond the show cause notice. The extract of the relevant portion of the judgment was provided below for quick reference:-

> *'16. Learned counsel for the Revenue tried to raise some of the submissions which were not allowed to be raised by the Tribunal before us, as well. We agree with the Tribunal that the revenue could not be allowed to raise these submissions for the first time in the second appeal before the Tribunal. Neither adjudicating authority nor the appellate authority had denied the facility of the project import to the respondent on any of these grounds.* ***These grounds did not find mention in the show cause notice as well. The Department cannot be travel beyond the show cause notice****. Even in the grounds of appeals these points had not been taken.'*

55. He has further pleaded that similarly in the case of ***Reckitt & Colman of India Ltd. v. CCE, reported at 1996 (88) E.L.T. 641 (S.C.)*** it was held by the Hon'ble Supreme Court that the Revenue authorities could not make an order against an assessee that was based on allegations and grounds that were not raised in the notice of show-cause. The relevant paragraph had been extracted for reference as under:-

"3. It would be remembered that the case of the Revenue, which the appellant had been required to meet at every stage from the show cause notice onwards, was that the said product was a preparation based on starch. Having come to the conclusion that the said product was not a preparation based on starch, the Tribunal should had allowed the appeal. ***It was beyond the competence of the Tribunal to make out in favour of the Revenue a case which the Revenue had never canvassed and which the appellants had never been required to meet.*** *It was upon this ground alone that the appeal must succeed."*

56. He has thus said that on the basis of the aforementioned submissions, an order could not travel beyond a show cause notice, and the investigation and the Report of the DGAP could not go beyond the application which acted as a basis of the investigation. In this regard, reliance was also placed by the Respondent on the case of ***Fx Enterprise Solutions India Pvt. Ltd. and ors. v. Hyundai Motor India Limited 2017 Comp 586 (CCI),*** wherein the Commission had asked the officer to conduct investigation regarding the contravention of Section 3 (4) read with Section 3 (1) of the Competition Act. However, the officer had also investigated whether the party had abused its dominant position in contravention of Section 4 of the Act. In this case, the Commission had held that the officer's investigation of contravention of Section 4 of the Act by the part was *dehors* the directions given and was *ultra vires* the scope of

investigation. The extract of the relevant portion of the judgement was as follows:-

> *"44…Thus, it was observed that the Commission had not directed the DG to investigate whether the OP had abused its dominant position in contravention of Section 4 of the Act. Further, both Information - 1 and Information - 2 filed by the Informants, only allege contravention of Section 3 (4) read with Section 3 (1) of the Act.* ***No allegations of abuse of dominance had been put forth by the Informants.***
>
> *…45. Accordingly, the Commission was of the view that the DG's* ***investigation of contravention of Section 4 of the Act by the OP, being dehors the directions given to the DG, was ultra vires the scope of investigation deserves to be disregarded."***

57. The Respondent has also submitted that without prejudice to the above, Rule 133 of CGST Rules, 2017 was *inter alia* amended vide Notification No. 31/2019-Central Tax, dated 28.06.2019 by way of inserting sub-rule (5), which provides as under:-

> *'(5) (a) Notwithstanding anything contained in sub-rule (4), where upon receipt of the report of the Director General of Anti-profiteering referred to in sub-rule (6) of rule 129, the Authority has reasons to believe that there had been contravention of the provisions of section 171 in respect of goods or services or both other than those covered in the said report, it may, for reasons to*

be recorded in writing, within the time limit specified in sub-rule (1), direct the Director General of Anti-profiteering to cause investigation or inquiry with regard to such other goods or services or both, in accordance with the provisions of the Act and these CGST Rules, 2017.'

In the instant case, no such reference had been made by this Authority to cause any investigation in respect of profiteering vis-à-vis customers, other than the Applicant No. 1.

58. The Respondent has also contended that in the absence of prescribed method of calculation of profiteering the proceedings were arbitrary and liable to be set aside as the CGST Act, 2017 read with the CGST Rules, 2017 did not provide the procedure and mechanism of determination and calculation of profiteering. In the absence of the same, the calculation and methodology used in the Report was arbitrary and was in violation of principles of natural justice. He has further contended that the Central Government vide Notification No. 10/2017-Central Tax dated 28.06.2017 (amending Notification No. 3/2017-Central Tax) has notified Anti-profiteering CGST Rules, 2017 which provide for constitution of the Authority, Standing Committee and Screening Committee, power to determine the methodology and procedure, duties of the Authority, examination of application, order of the Authority and compliance by the registered persons etc. He has also stated that Rule 126 of the CGST Rules, 2017 contained provisions regarding the power to determine the methodology and

procedure. The extract of the relevant portion of the rule has been quoted below by the Respondent:-

"Rule 126- power to determine the methodology and procedure.-

The Authority might determine the methodology and procedure for determination as to whether the reduction in the rate of tax on the supply of goods or services or the benefit of ITC had been passed on by the registered person to the recipient by way of commensurate reduction in prices."

On the basis of the above Rule the Respondent has claimed that the Authority had the power to determine the methodology and procedure for determination as to whether the reduction in rate of tax on the supply of goods or services or the benefit of ITC had been passed on by the registered person to the recipient by way of commensurate reduction in prices, however, as on date, CGST Rules, 2017 had not prescribed any procedure/ methodology/ formula/ modalities for determining/ calculating 'profiteering'.

59. The Respondent has also contended that the Methodology and Procedures, 2018 issued on 19.07.2018 by this Authority only provided the procedure pertaining to investigation and hearing. However, no method/formula had been notified/prescribed pertaining to the calculation of the profiteered amount. Rule 127 of the CGST Rules, 2017, prescribed the duties of the Authority whereby it could

order reduction in prices, return to the recipient an amount equivalent to the amount not passed on as benefit, imposition of penalty and cancellation of registration under the CGST Act. The duties of the Authority as enumerated in Rule 127 included determination whether benefits consequent to reduction in rate of tax or allowance of ITC were being passed on to the recipients, identification of registered persons who had not passed on the benefits to the recipients and passing of orders effecting reduction in prices. However, under the CGST Act, 2017 or CGST Rules, 2017 made thereunder, there was no indication, let alone description as to how to conclude that there was profiteering due to change in the rate of tax. Whether such computation had to be done invoice-wise, product-wise, business vertical-wise or entity-wise, etc. Thus, in absence of the same, there was lack of transparency and the results could vary from case to case resulting in arbitrariness and violation of Article 14 of the Constitution of India and it would be impossible for the Respondent to defend its case and explain how the observations and findings of the Applicant No. 2 were incorrect which violated the principles of natural justice. He has also submitted that the absence of mechanism or framework within which the Authority/ DGAP must discharge their duties, would also lead to arbitrariness.

60. In this regard, reference was made by the Respondent to other countries where GST is/was in place. In order to control rise in inflation on account of implementation of GST, the Malaysian Government had introduced the 'Price Control and Anti-Profiteering (Mechanism to Determine Unreasonably High Profit) (Net Profit Margin) Regulations 2014, which provided for the mechanism to

calculate whether any Respondent had profiteered on account of GST or not. The Anti-Profiteering measures in Australia revolved around the 'Net Dollar Margin Rule' serving as the fundamental principle for their guidelines. If the new tax scheme - GST in this case - caused taxes and costs to fall by $ 1, then prices should fall by at least $ 1. At the same time if the cost of the business rose by $ 1 under the new tax scheme, then prices might rise by not more than $ 1. These regulations had been set as barometers for calculating profiteering, the Respondent has claimed.

61. In this regard, reliance was placed by the Respondent on the case of ***Eternit Everest Ltd.*** v. ***UOI 1997 (89) E.L.T. 28 (Mad.)***, where the Hon'ble Madras High Court had held that in the absence of machinery provisions pertaining to determination and adjudication upon a claim or objection, the statutory provision would not be applicable. In the case of ***Commissioner of Income Tax Bangalore*** v. ***B. C. Srinivasa Setty, (1981) 2 SCC 460***, the Hon'ble Supreme Court has held that charging section was not attracted where corresponding computation provision was inapplicable. It was also submitted that relying on the case of B. C. Srinivas Shetty, the Hon'ble Allahabad High Court in the case of ***Samsung (India) Electronics Pvt. Ltd. v. Commissioner of Commercial Taxes U.P. Lucknow***, ***2018 [11] G.S.T.L. 367*** had observed that in the absence of any procedure or provision in the UP VAT Act, 2008 Act conferring such authority, in the case of sale of composite packages bearing a singular MRP, the authorities under the Act could not possibly assess the components of such a composite package separately. Such an exercise, if undertaken, would also fall foul of the principles enunciated by the Supreme Court.

In this regard, reliance was also placed on the case of ***Union of India*** v. ***Suresh Kumar Bansal 2017 (4) G.S.T.L. J128 (S.C.)***, wherein it was confirmed by the Hon'ble Supreme Court that explanation added to Section 65 (105) (zzzh) of the Finance Act, 1994 vide the Finance Act, 2010 expanding scope of taxability of construction of complexes intended for sale by builders, was ultra vires as there was no statutory mechanism to ascertain value of service component of the subject levy.

62. It was also submitted that this Authority was itself using different methodologies to ascertain 'profiteering' in the cases filed before it. In some cases, the Authority had restricted itself to the goods mentioned in the application, while in some other it had considered business as a whole which showed that there was no defined procedure being adopted by the Authority leading to the arbitrariness.

63. The Respondent has also contended that the DGAP has arrived at the figures of alleged profiteering on the basis of the difference between the ratio of ITC to turnover under the pre-GST and the post-GST periods however, by using this formula correct quantum of profiteering could not be computed. He has also claimed that the comparison of the above ratios was not appropriate for the reason that under the real estate sector, there was no correlation of turnover with the cost of construction or development of a project. The turnover reflected the amount collected as per payment or booking plans issued by the developer which was dependent upon market driven strategy. On the contrary, the ITC accrued to a developer on the basis of actual cost incurred by him while undertaking the development of a project. Thus, accrual of ITC was not dependent on the amount collected from the

buyers. In this sector, advance was received by the suppliers/dealers even before the commencement of the projects. Likewise, units were sold after the completion of the project as well. Thus, receiving of inputs/input services and taking credit of the same did not have any immediate and direct relation with the turnover. Accordingly, calculating profiteering on the basis of turnover could not reflect the correct outcome for the Respondent.

64. The Respondent has also contended that the following points were totally ignored by the DGAP in his Report dated 25.06.2019, while calculating the alleged profiteering based on the comparison of ratios of ITC to turnover for the pre-GST period and the post-GST period:-

- Construction project Life cycle effect had been totally ignored and it had been assumed that uniform expenses were incurred throughout the lifecycle of the project based on the formula adopted by the DGAP;
- The turnover would vary as per the market conditions and it was difficult to maintain the ratio of the same in proportion to procurement in a real estate sector e.g. turnover would be less in lean period while credit would still be higher due to continuous use of inputs/input services for construction;
- ITC was an absolute number which would vary as per the Govt. rate policies. A lot of goods had been moved from 28% to 18% slab. This had not resulted into any benefit to the registered buyers as they were entitled to credit in both scenarios. However, this would significantly vary the ratios as calculated by the DGAP to assess the anti-profiteering benefit;

- Reversal of ITC in future due to receipt of Completion Certificate might also had a bearing on ITC availed by the supplier/developer. Such a critical factor needed to be given appropriate weight while making the final computation. The calculation made under the aforesaid methodology proceeded on an assumption that all the expenses incurred in the GST period were towards the turnover, as all the credit had been attributed towards the same. No regard was given to the fact that ITC would also get accumulated on account of construction of unsold units.

65. Based on the above contentions it was submitted by the Respondent that the additional ITC in his hands in terms of Section 171 of the CGST Act would reflect such ITC on goods or services which was not available earlier to the Respondent. However, the approach adopted by DGAP for calculating the additional benefit which has accrued to the Respondent was based on the change in the rate of tax on input goods and services in the GST regime itself. The credit with respect to such inputs/input services was available to the Respondent earlier as well before the change in the rate. Further, the DGAP has not considered the tax cost which was earlier blocked in the hands of the Respondent. Hence, the above approach of comparison of ITC to turnover for the pre-GST and post-GST periods for a limited period instead of project duration was not a correct approach and profiteering computed on the basis of the same was liable to be set aside on this count itself.

66. The Respondent has also submitted that the essence of Anti-Profiteering provision was to ensure that the companies, with the

introduction of GST, pass on the benefit of reduced output tax rates and increased ITC to the customers by way of commensurate reduction in prices. Section 171 (1) of the CGST Act dealing with Anti-Profiteering provided that any reduction in rate of tax on any supply of goods or services or the benefit of ITC shall be passed on to the recipient by way of commensurate reduction in prices. He has also argued that provision of Anti-Profiteering required the registered person to pass on the benefit available on following grounds:-

Reduction in rate of tax on supply of services:

There was no benefit arising on account of reduction in rate of tax on supply of services.

Benefit of ITC

With respect to benefit of ITC available, the same was dependent upon various factors such as stage of construction and negotiation with vendors etc. The following two factors must be taken into account for calculating the quantum of benefit:-

- Benefit on transitional stock carried forward in Trans 1 Form.
- Saving of taxes on goods/services to be purchased in GST regime for completion of the project

67. It was further submitted by the Respondent that he had estimated the additional benefit which would accrue to him in the present project based on the above factors. Accordingly, he has passed on the benefit of 3.35% to the eligible customers, by way of commensurate reduction in prices due to expected additional ITC which would accrue to the Respondent under the GST regime. However, the DGAP has ignored the same and has considered the ratio of ITC to the turnover of pre-GST and post-GST period for calculating the benefit of additional ITC which would never yield the correct quantum of profiteering. He has also furnished the details of actual benefit passed on to the different categories of customers.

68. The Respondent has also contended that without prejudice to the above submissions, applying the methodology adopted by the DGAP, the period considered by the DGAP for the pre-GST period should have been from September 2014 to June 2017 instead of the period from September 2014 to March 20116.

69. The Respondent has further contended that the DGAP has ignored the CENVAT credit availed for the period from April 2016 to June 2017 while computing the profiteering based on the premise that there was no consideration received during the period from April 2016 to June 2017. The DGAP has observed that pre-GST period should be considered from September 2014 to March 2016 as only during this period, both the indicators (ITC as well as the turnover) existed. But this observation of the DGAP was incorrect to the extent that there was no turnover during the period from April 2016 to June 2017. Also mere absence of turnover, could not be a reason for disregarding the period from April 2016 to Jun 2017 in the computation of profiteering

in terms of the applied methodology. The comparison of ratio of ITC to turnover for the pre-GST period and the post-GST period was not the correct methodology for computing profiteering under Section 171 of CGST Act as it suffered from various inconsistencies and assumptions discussed above. Further, this methodology assumed that uniform expenses would be incurred throughout the project lifecycle and that turnover would also be uniform, which practically varied a lot given the market conditions and was objectively, an incorrect assumption to make. Presuming the same to be true and applying the same to the present case, the assumption of uniformity of expenses and turnover was *qua* the pre-GST period and the post-GST period as a whole and it could not be restricted to any specific period at the whims and fancies of the DGAP.

70. The Respondent has also submitted that the objective behind considering the entire period of the project (be it pre-GST or post-GST period) was that, the ITC and its co-relation with turnover should be assessed at the broader periodic level rather than linking it with a particular period of the project. No period of a project should be excluded for the purpose of computing the profiteering as doing the same would lead to incorrect results. In this regard, reference was made by the Respondent to Rule 5 of CENVAT Credit Rules, 2004 wherein refund was allowed of CENVAT credit in the ratio of export turnover to the total turnover for that particular relevant period. He has also mentioned that it was held in a catena of case laws that 'CENVAT credit' meant credit which was lying unutilized at the end of relevant period and not just pertaining to the relevant period. Thus, even if the turnover considered was for a particular month, the

CENVAT credit considered for computing refund was the balance lying at the end of said particular relevant period. Applying the said ratio to present facts, it was immaterial whether during a specific period, the turnover was nil, in the said period.

71. It was also submitted that the impugned methodology was based on assumption of uniformity of ITC as also the turnover during a particular period, which in the instant case was pre-GST and post-GST period. He has also claimed the DGAP has himself stated that the said uniformity did not hold good as it had excluded the period of April 2016 to June 2017 from the computations by observing that during that period, the Respondent had Nil turnover with huge CENVAT credit, therefore his own assumption stood defeated and the impugned methodology was inappropriate for computation of profiteering. He has also submitted that after considering the methodology adopted by the DGAP including the period from April 2016 to June 2017, the result would be different which is given in the Table below:-

Table

(Amount in Rs.)

S. No.	Particulars	Apr'14 to June'17	July'17 to Dec'18
A	Credit of Service Tax Paid on Input Services	2,32,05,080	
B	ITC of GST Availed		13,06,94,423
C	Turnover from List of Home buyers (net of cancellation)	31,01,45,170	1,89,78,50,586
D	Total Saleable Area (in SQF)	6,96,969	6,96,969
E	Saleable Area (in SQF) relevant to turnover	3,53,181	5,83,022

F	ITC relevant to Area Sold [(F) = (A)*(E)/(D) or (B)* (E)/(D)]	1,17,58,907	10,93,27,278
Ratio of ITC to Turnover [(G) = (F)/(C)* 100]		3.79%	5.76%
Profiteering %		2.17%	

72. On the basis of the aforementioned calculations made on the methodology adopted by DGAP including the period from April 2016 to June 2017, the Respondent has claimed that he was only liable to pass on benefit of 2.17% to his customers whereas he has passed on benefit of at least 3.35% to the eligible customers of the present project which was more than the profiteering computed on the basis of the methodology adopted by the DGAP.

73. The Respondent has also submitted that without prejudice to the above, if it was assumed that the observation given by DGAP was correct insofar as the period in which there was no turnover the same should be excluded for computing the profiteering.

74. He has also stated that he had a turnover of Rs. 4,81,176/- during the period from March 2017. Thus, the observation made by DGAP that there was no turnover during the period from April 2016 to March 2017 was factually incorrect. It was also submitted that the turnover of Rs. 81,176/- pertained to the TDS certificates collected in respect of 10 customers during the period from April 2016 to March 2017. Further, there was a receipt of Rs. 4,00,000/- from one customer during the period from April 2016 to March 2017. However, Service Tax was not paid on the said receipt due to clerical errors.

75. The Respondent has also contended that the profiteering computed on the methodology adopted by the DGAP has certain Quantum Computation Errors as have been given below:-

a. Without prejudice to the above, if it was assumed that the percentage calculation of profiteering of 4.25% by DGAP was correct, in such a scenario, the computation of quantum of benefit to be passed was incorrect.

b. For computing the profiteered amount, the difference should be calculated between the base price during the relevant period vis-à-vis the recalibrated base price, excluding the GST amount. Further, the recalibrated base price should be computed as inclusive of profiteered amount instead of the computation made above. The correct computation of quantum of profiteering is given by him as below:-

Analysis of Increase in ITC:		
Base Price raised during July, 2017 to December, 2018 (Rs.)	A	1,89,79,84,692
Recalibrated Base Price	B = A/104.25%	1,82,06,08,817
Excess Collection of Demand or Profiteered Amount	C = A – B	**7,73,75,874/-**

76. The Respondent has also filed his next written submissions on 20.09.2019 vide which he has submitted that he has not filed Form GST TRAN-2 during transition in the GST regime. Further, the revised number of units and corresponding area for the present project has been mentioned as is given below:-

Particulars	No. of Units	Saleable Area (sq. ft.)
A. Units booked in pre-GST regime [1][2]	295[3][4]	3,66,515
B. Units booked in GST regime (till 31.12.2018)	198[5]	2,44,058
C. Units booked as on 31.12.2018 (A+B)	493[5]	6,10,573
D. Less: Units for which billing had not been done in GST regime	20	27,551
E. Net Units as on 31.12.2018 (C-D) (considered for calculation of ratios)	473	5,83,022
F. Unsold units as on 31.12.2018	67	1,13,947
G. Total Residential Units **(D+F)**	560	6,96,969
H. Commercial Units (Unsold)	8	
I. Total Units **(G+H)**	568	
The project was under profit sharing model		

77. The Respondent has also given his next written submissions on 27.09.2019 vide which he has submitted details of comparison of prices of the flats in the present project as on September 2014, when the project was launched and as on 19.11.2017, when the Applicant No. 1 had made booking of the Flat. He has also submitted that the Applicant No. 1 had booked unit no. GCPT1D0403 with saleable area of 1086 sq. ft. on 19.11.2017. It was also submitted by the Respondent that he had not booked any unit in the pre-GST regime of the category (1086 sq. ft.) booked by the Applicant No. 1. Further, the Respondent has submitted home-buyer's list showing the prices at which units were booked in different time periods. He has also furnished a copy of Respondent's letter/e-mail to the Applicant No. 1 regarding giving benefit of GST.

78. The Respondent has also added that the customers who had booked units from 01.07.2017 to 01.02.2018, were passed on GST benefit of 6%. The benefit passed by the Respondent was factored in the price at which units were booked and was duly recorded in the cost sheet itself which was part of Builder Buyer Agreement. He has also

enclosed copy of cost sheet of the Applicant No. 1 who had booked the flat on 19.11.2017.

79. Clarification were also sought from the DGAP on the Respondent's submissions dated 20.09.2019. The DGAP vide his Report dated 07.10.2019 has submitted that the amount of ITC of GST availed mentioned in Table- 'B' of his Report dated 20.05.2019 had been considered from the Respondent's submissions dated 21.06.2019. However the Respondent has now submitted different figures of ITC availed during the post-GST period before the Authority which were inconsistent with the earlier figures as follows:-

Table:-

(Amount in Rs.)

S.No.	Period	Submitted during investigation	Submitted vide letter dated 20.09.2019	Difference
1	July 2017 to March 2018	4,94,26,855	4,92,01,366	2,25,489
2	April 2018 to December 2018	8,19,78,649	8,14,64,629	5,14,020

80. Regarding the Respondent's contention that the CENVAT Credit for the period from April 2016 to June 2017 was not taken into consideration by the DGAP, the DGAP has stated that this issue had already been addressed vide para- 17 and 20 of his Report dated 25.06.2019. Regarding Respondent's another contention that the details of benefit passed on to customers were not considered by the DGAP, the DGAP has submitted that the Respondent had not submitted details of the benefit passed on during the course of

investigation even after repeated requests made vide letters dated 01.05.2019 and 04.06.2019 and summons dated 11.06.2019. The same had also been pointed out in para-13 of the Report dated 25.06.2019. Further the buyer's details mentioned in proof of passing on the benefit as per his submissions dated 20.09.2019 seemed to be inconsistent with the details of buyers submitted during investigations e.g. for customer Mr. Ahmed Junaid Shareef (Customer Code-10013771) total billing till 31st Dec. 2018 as per the Respondent's submissions was Rs. 24,66,747/- whereas, the Respondent vide e-mail dated 19.06.2019 had submitted total billing as Rs. 23,72,434/-. The same was true for most of the customers. The DGAP has also clarified that though the Respondent had availed ITC, he had not received any consideration during the period from April 2016 to June 2017. Therefore, for the purpose of computation of ratio of input tax credit to turnover, if he divided the input tax credit availed during April 2016 to June 2017 with Nil turnover, the result would be distorted and not comparable. Therefore, he in his Report had considered the period in the pre-GST regime from April 2014 to March 2016 as the Respondent had received consideration as well as availed CENVAT credit of the Service Tax.

81. The Respondent has filed his last written submissions on 07.11.2019 vide which he has submitted the following in response to the DGAP's Report dated 07.10.2019 which are as follows:-

A. There were certain differences observed by the DGAP in respect of ITC and turnover in respect of the amount submitted to the DGAP vis a vis the amount submitted to this Authority which were very minor.

B. The DGAP had observed that the amount of ITC submitted to the Authority was inconsistent with the details submitted to him during the investigation. In this regard, it was to be noted that the difference was majorly on account of proportionate credit reversal adjusted while computing ITC for the project. The same was done after observation by the Authority during the personal hearing that proportionate credit reversal of corporate office credit should be adjusted. The above reversal has been summarised as follows:-

S. No.	Particulars	July 2017 to March 2018	April 2018 to December 2018
A.	Submitted during investigation	4.94	8.20
B.	Submitted to Authority	4.92	8.15
C.	Gross amount [A-B]	0.02	0.05
D.	Amount due to proportionate credit reversal considered while submitted figures to the Authority [C-D]	0.02	0.05

C. The DGAP had observed that the home-buyers details submitted to the Authority seemed to be inconsistent with the details of home-buyers submitted during the investigations to the DGAP. In this regard, it was submitted that all the details submitted to the Authority were the correct figures which had been submitted after re-examination. Further, in totality, the difference on account of advances and instalments billed was very nominal as has been mentioned below:-

S. No.	Particulars	Unadjusted Advances as on 31.12.2018	Instalments Billed from 01.07.2017 to 31.12.2018
A.	Submitted during investigation	3.79	186.01
B.	Submitted to Authority	3.80	185.98
C.	Difference [A-B]	(0.02)	0.03

D. Further, in respect of Mr. Ahmed Junaid Shareef, it was to be noted that the Respondent had submitted total billing of Rs. 23,71,345/- to the Authority. The amount mentioned by the DGAP in his observations was inclusive of the benefit of Rs. 95,402/-. The above difference has been explained as follows:-

S. No.	Particulars	Amount
A.	Submitted during investigation	23,72,434
B.	Submitted to Authority *[Rs. 23,71,345/- plus benefit of Rs. 95,402 had been considered by DGAP for comparing which comes out to Rs. 24,66,747/-. However, the billing amount was Rs. 23,71,345 which was accurately submitted to the Authority as mentioned in List of Home-buyers (Exhibit-3 of earlier submission)]*	23,71,345
C.	Gross Difference [A-B]	1088

E. It was also to be noted that there were some minor differences in the billed amount of different home-buyers (including Mr. Ahmed Junaid Shareef) due to some technical glitch in the system while extracting data from the SAP. The details submitted to the Authority were the correct ones.

F. Further, it was submitted that there were some differences in the unadjusted advances as on 31.12.2018 when comparison was made with the details submitted to the DGAP. The difference was on account of technical glitch in the system to extract unadjusted advances as on 31.12.2018. This was mainly due to following two reasons:-

i. Advances received in pre-GST regime on which Service Tax had already been paid were also accounted in the unadjusted advances as on 31.12.2018. This had led to increase in

unadjusted advances as on 31.12.2019 when details were submitted to the DGAP.

ii. Advances received in GST regime when billed to customers were knocked off in the system. However, for certain customers, advances were knocked off in the system after 31.12.2018 even though billing was done prior to 31.12.2018. However, while extracting data, the system computed unadjusted advances which were knocked even after 31.12.2018. This had led to decrease in unadjusted advances as on 31.12.2018 when details were submitted to the DGAP.

82. We have carefully considered all the Reports filed by the DGAP, submissions of the Respondent, the Applicant No. 1 and other material placed on record and it is revealed that the Respondent is executing "Godrej City Panvel Phase-I" project at Khanvale, Panvel, Raigarh-410206. It is also revealed that the Applicant No. 1 had booked a flat in the above project on 19.07.2018 and had complained to the Standing Committee on Anti-Profiteering on 12.10.2018 that the above Respondent was not passing on the benefit of ITC to him on the Flat No. D0403, Tower-2 which he has purchased from him. 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 No. 1 and vide his Report dated 25.06.2019 has stated that the Respondent has violated the

provisions of Section 171 of the above Act by resorting to profiteering of an amount of Rs. 9,03,44,071/-.

83. The Respondent has stated that the Standing Committee has erred in referring the matter to the DGAP for further investigation as per Rule 128 (1) of the CGST Rules, 2017 as the application filed by the Applicant No. 1 was only on basis of one ground that the Respondent had not passed on the benefit on account of reduction in the GST rate on 'Paints and Varnishes' from 28% to 18%. In this respect it would be relevant to quote the relevant paras of the application dated 12.10.2018 filed by the above Applicant before the Standing Committee which was investigated by the DGAP, as under:-

"4. The Government has reduced the GST rates on a large number of goods and services on the recommendations of the GST council w.e.f. 27.07.2018. Among the list of items, GST tax rates on Paints and varnishes have been reduced from 28% to 18%. Paints and varnishes contribute a considerable value in building/ flat construction. The approximate basic cost of paints and varnishes for my flat including common areas is approximately Rs 3.0 Lakh. The builder has a net saving of approximately Rs 30,000 due to change in tax rate. I have requested my builder to pass on the benefit received due to the reduction in GST tax rate in the form of discount via mails dated 18.08.2018 and 22.09.2018.

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

*7. **I understand that as per the provisions of Section 171 of the CGST Act, 2017,** 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. But my builder is not passing me any*** *discount or* ***benefit.***

8. *The* ***builder cannot appropriate this benefit (Rs 1.50 Cr) as this is a concession given by the Government from its own tax revenue to reduce the prices being charged by builders. The builder is not being asked to extend this benefit out of his own account and he is liable to pass on the benefit.***
9. *The government in the public interest reduced the rate on tax on the various products being sold by sacrificing its own revenue and therefore, the builder is bound to pass on this benefit to customers and by no stretch of imagination he can pocket this reduction to the detriment of the ordinary customer.*
10. *The builder cannot be allowed to top up his margins from the amount of tax reduction which he is legally required to pass on this to his customers.* ***The Builder is not willing to pass on any benefit to me: The above-said benefit amount may be passed on to all flat owners.***

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

(Emphasis supplied)

84. It is clear from the perusal of the above Application that the Applicant No. 1 had specifically mentioned in his application that the Respondent was required to pass on the benefit of ITC to him which he was not passing on. Therefore, the allegation of the Respondent

that the above Applicant had only requested to pass on the benefit of tax reduction on Paints and Varnishes is absolutely wrong. The Respondent has also not denied that he was getting benefit of ITC on all the inputs and input services during the post-GST period and hence as per the provisions of Section 171 (1) of the above Act he was bound to pass on the additional benefit of ITC. Therefore, the above application was correctly forwarded by the Standing Committee for investigation to the DGAP under Rule 129 (1) of the above Rules.

85. The Respondent has further stated that the Applicant No. 1 had booked his unit after the enactment of the GST Acts and therefore, the price charged by the Respondent had taken in to account the GST benefit and other market factors and he had also passed on 6% benefit to him. However, the investigation carried out by the DGAP shows that the above Applicant was entitled to the benefit of ITC of Rs. 2,23,696/- and hence the claim of the Respondent that the Applicant was not entitled to be above benefit is not correct. The Respondent has also admitted that he has paid benefit of 6% to the above Applicant which also proves that the above contention of the Respondent is incorrect and hence the same cannot be accepted.

86. The Respondent has also submitted that the DGAP's Report could not go beyond the application submitted by the Applicant No. 1 on 12.10.2018 and no investigation could be conducted by the DGAP in respect of the flats purchased by the other buyers. In this respect it would be pertinent to mention that the Applicant No. 1 had specifically alleged in his application dated 12.10.2018 vide para 10 that the benefit of ITC should be passed on to all the flat buyers. As per Rule 128 (1) of the above Rules any other person can also file application

before the Standing Committee to pass on both the above benefits. Since, the above Applicant had requested to pass on the benefit to all the flat buyers the above complaint has been rightly recommended by the Standing Committee and correctly investigated by the DGAP. Further, under Rule 129 (2) of the above Rules the DGAP is required to investigate whether a registered person has passed on the benefit of tax reduction or ITC to the recipients or not and hence during the course of investigation if it comes to his notice that the above two benefits have not been passed on to those recipients who had not filed complaint against the registered person, he is legally bound to investigate the same and bring the facts before this Authority for determination of those benefits to the eligible recipients. It is also clear that the above benefit has accrued to the Respondent due to the concession given by the Central as well as the State Government out of the public exchequer, therefore, the DGAP is bound to investigate to ascertain whether the Respondent has misappropriated the amount of ITC which he was required to pass on to the buyers. The DGAP cannot overlook commission of an offence which has occurred under Section 171 (1) of the above Act once it has come to his notice during the course of the investigation and hence the above contentions of the Respondent are not correct.

87. The Respondent has also submitted that power to order investigation in respect of those cases where allegations were not made in the original complaint was conferred on this Authority vide Notification No. 31/2019-Central Tax dated 28.06.2019 and hence the DGAP could not have expanded the scope of investigation as was evident from his Report 25.06.2019. Perusal of the above Notification shows that it

confers power of ordering investigation on this Authority under Rule 133 (5) (a) if any new facts come to its notice during the course of the hearing before it and the above provision has no connection with the investigation to be carried out under Rule 129 on the reference having been made by the Standing Committee on Anti-Profiteering. Since the above Applicant had specifically alleged that the Respondent was not passing on the benefit of ITC and it should be passed to him as well as to all the other flat buyers hence no order was required to be passed by this Authority under the above Rule. Accordingly, the interpretation given to the above provision by the Respondent is farfetched and hence the same is not tenable.

88. In this regard the Respondent has quoted the case of ***Dinesh Mohan Bhardwaj v. M/s Vrandavaneshwree Automotive Private Limited 2018-VIL-01-NAA*** however, the above case is of no help to the Respondent as it was found in the above case that the Applicant was entitled to the benefit of ITC on the Honda Car having Model No. WR-V 1.2 VX MT (i-VTEC) which had already been passed on by the above Respondent. Hence, there was no ground to investigate the other models of the Cars. However, in the present case it was found that the Respondent has not passed on the benefit to the above Applicant and hence there was sufficient ground for the DGAP to investigate the passing on of the benefit to other flat buyers also. Moreover, the above Applicant had also requested for passing on the benefit to all the buyers.

89. The Respondent has further cited the case of ***Rishi Gupta v. M/s Flipkart Internet Pvt Ltd. 2018 VIL-04-NAA.*** In this case, the Respondent was not the supplier of the Almirah and hence he had not

violated the provisions of Section 171 (1) of the above Act and hence, there was no ground to investigate him in respect of other products as he was not a supplier. However, during the course of the proceedings it was found that M/s Flipkart had not refunded the extra GST to the buyers which was ordered to be refunded and it was accordingly refunded. Therefore, the above case does not help the cause of the Respondent.

90. The Respondent has also placed reliance on the decision given by this Authority in the case of ***Kerala State Screening Committee on Anti-Profiteering and another v. M/s Pulimoottill Silks 2019 (2) TMI 296*** *in which no reduction had occurred in the rate of tax.* ***In the case of Kerala State Screening Committee on Anti-Profiteering and another v. M/s Velbon Vitrified Tiles Pvt. Ltd. 2019 (3) TMI 370*** the benefit of tax reduction had already been passed on. In both these cases violation of the provisions of Section 171 (1) had not been committed hence the facts of these cases were not similar to the facts of the present case where violation of the above provisions has been made and hence the decisions passed in these cases are not being relied upon.

91. The Respondent has further submitted that the DGAP could not *suo moto* assume jurisdiction with regard to other customers. As has been discussed supra the DGAP has acted on the specific allegation made by the above Applicant that the benefit of ITC had not been passed on by the Respondent which should be given to all the other flat buyers and hence the DGAP has not exceeded his jurisdiction. In this regard it would also be relevant to mention that in case during the course of the investigation it comes to the notice of the DGAP that a registered

person has not passed on the benefits which he is required to pass on as per the provisions of Section 171 (1), the DGAP has to investigate the same as he is legally required to investigate and bring such violations of the above provisions before this Authority. The Respondent cannot get away by pocketing the benefit which he is legally required to pass on, on the pretext that he could not be investigated as no complaint was made in respect of the other flats. Therefore, the DGAP has not exceeded his jurisdiction and the objection raised by the Respondent in this regard cannot be accepted.

92. He has also argued that the application filed by the Applicant No. 1 could be compared to a show cause notice and it was settled principle of law that an order adjudicating a show cause notice could not travel beyond its scope. On this issue it would be relevant to mention that the application filed by the above Applicant cannot be compared to the show cause notice. The DGAP was required to issue notice to the Respondent under Rule 129 (3) of the above Rules which he has done vide notice dated 15.01.2019, however, there is no provisions to treat the application filed by a complainant as show cause notice in the above Rules. Hence, the above claim of the Respondent is not tenable. The Respondent has also placed reliance on the case of ***Toyo Engineering India Limited v. CC Mumbai 2006 (201) E.L.T. 513 (S.C.)*** in this regard. However, it is submitted that no additional grounds have been raised in the present case at the time of subsequent appeals as no appeal has been filed before this Authority and hence the above case does not support the case of the Respondent.

93. He has also cited the case of ***Reckitt & Colman of India Ltd. v. CCE 1996 (88) E.L.T. 641 (S.C.)*** in this context. However, the law settled in this case is not applicable in the facts of the present case as there was a complaint against the Respondent which prima facie disclosed that the Respondent has not passed on the benefit of ITC which was found to be correct on investigation and a show cause notice was duly served on the Respondent and hence the above case does not come to the rescue of the Respondent.

94. The Respondent has also quoted the case of ***Fx-Enterprise Solutions India Pvt. Ltd. and ors. v. Hyundai Motor India Limited 2017 Comp 586 (CCI)*** however, in this case the Director General had investigated those issues which were not ordered to be investigated by the Competition Commission whereas the DGAP has only investigated whether the Respondent has passed on the benefit of ITC or not which he is legally entitled to investigate as per the provisions of Rule 129 and hence the above case is of no help to the Respondent.

95. The Respondent has also submitted that under Rule 133 (5) (a) of the CGST Rules, 2017 this Authority can order investigation if there had been contravention of the provisions of section 171 in respect of goods or services or both other than those covered in the Report furnished by the DGAP under Rule 129 (6), however, in the present case no such reference was made by this Authority to the Respondent. As already discussed above the DGAP has not exceeded his jurisdiction as the application filed by the above Applicant had disclosed that the Respondent had not passed on the benefit of ITC to him as well as to the other flat buyers and hence the

DGAP was legally bound to investigate the same and bring the facts before this Authority which is empowered to determine under the provisions of Section 171 (2) of the above Act and Rule 133 of the CGST Rules, 2017 whether the benefit of ITC has been passed on by the Respondent to the eligible buyers as per the provisions of Section 171 (1) and therefore, no illegality has been committed by the DGAP while conducting investigation in respect of the buyers who had not filed complaint against the Respondent and who were legally entitled to the benefit of ITC.

96. The Respondent has also contended that in the absence of prescribed method of calculation of profiteering the methodology used in the Report was arbitrary and was in violation of principles of natural justice. The Respondent has also contended that the Methodology and Procedures, 2018 issued on 19.07.2018 by this Authority only provided the procedure pertaining to investigation and hearing and no methodology has been prescribed for computation of profiteering. It would be appropriate to mention here that Section 171 (1) of the above Act provides that "Any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices." Therefore, it is apparent that the above provisions clearly provide the methodology of computing the benefit of tax reduction or ITC and also the methodology of passing on the above benefits by commensurate reduction in the prices of every supply made by a registered person to every recipient and hence no further methodology is required to be prescribed by this Authority. The above provisions are clear, unambiguous and appropriate keeping in view the intention of the

legislature to pass on both the above benefits. It is further evident from the above provisions that these benefits have to be passed on every supply to every buyer and hence the benefit has to be computed on each Stock Taking Unit (SKU) level of every product and every flat bought by a customer and it cannot be calculated at the level of entity or business vertical. Every buyer is entitled to the benefit which cannot be denied to him on the ground that it has been passed on to the other buyer or on the other product or at the entity or vertical level or at the invoice level. Denial of the above benefits on any such ground will amount to violation of the provisions of Section 171 (1) of the CGST Act, 2017 as well as Article 14 of the Constitution. Hence, there is no scope of arbitrariness on this ground as has been alleged by the Respondent.

97. In this connection it also would be relevant to state that under Rule 126 of the CGST Rules, 2017 this Authority has been granted power to determine 'Methodology & Procedure' for determination whether the benefit of rate reduction or of ITC has been passed on by the registered person to the recipient or not, by the Central Government 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 Section and 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. This Authority has already framed the Methodology and Procedure under the power given to it under Rule 126 of the above Rules, on 28.03.2018 and not 19.07.2018 as has been claimed by the Respondent. 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. In this regard, it would also be relevant to mention that the profiteering has to be determined on cases to case basis, by adopting the most appropriate and accurate mathematical method based on the facts and circumstances of each case as well as the nature of the goods and services supplied. There cannot be any fixed mathematical formulation/methodology for determination of the quantum of benefit to be passed on which could cover different sectors of the economy and each case has to be decided based on its specific facts. The mathematical methodology adopted in the case of real estate sector cannot be applied in the case of consumer goods sector. Even the mathematical methodology applied in two cases of real estate cannot be the same as it would depend on the amount of ITC availed as well as the turnover realised. This Authority certainly cannot prescribe how to do mathematical calculations of the profiteered amount as it can be easily done by any person who knows elementary mathematics. The Respondent has also been granted full opportunity to raise objections against the methodology applied by the DGAP and hence there has been no violation of the provisions of principles of natural justice.

98. In this regard, the Respondent has also referred to the legislation passed by the Governments of Malaysia and Australia and suggested that similar provisions should be made in India also. In this connection it would be pertinent to mention that the Government of Malaysia has already repealed the 'Price Control and Anti-Profiteering (Mechanism to Determine Unreasonably High Profit) (Net Profit Margin) Regulations 2014 as they were not properly working. These provision were also regulating and controlling the prices in Malaysia. As far as the 'Net Dollar Margin Rule' framed by the Government of Australia is concerned the same amounts of fixing of prices which is not the intention of the provisions of Section 171 (1) of the above Act as it proposes to only pass on the above two benefits and does not propose to control the prices. It is strange that the Respondent is not willing to pass on the above benefits which he is not to pay from his own pocket as both of them are being given out of the tax revenue of the Central as well as the State Governments but is advocating fixing of prices of his flats by the Government. Therefore, the above contentions of the Respondent are frivolous and cannot be taken in to consideration.

99. In this regard reliance was placed by the Respondent on the case of ***Eternit Everest Ltd.*** v. ***Union of India 1997 (89) E.L.T. 28 (Mad.)***. In this connection it is mentioned that no tax has been levied under Section 171 (1) of the above Act and hence no machinery is required to compute it. However, adequate machinery has been provided to implement the Anti-profiteering measures as under Section 171 (2) of the above Act this Authority has been constituted to determine whether the above benefits have been passed on or not. Under Rule

123 Standing and Screening Committees on Anti-Profiteering have been constituted to prima facie look in to the complaints received from the complainants who have been denied the above benefits. Under Rule 129 office of DGAP has been created and empowered to investigate the complaints and under Rule 127 this Authority has been assigned the duty of determining whether these benefits have been passed on not. Under Rule 133 this Authority has been empowered to determine the above benefits, grant them to the eligible recipients and get the profiteered amount deposited. Under Section 171 (3A) of the CGST Act, 2017 read with Rule 133 (3) (d) of the above Rules, this Authority has been given power to impose penalty on the registered persons who do not pass on the above benefits. Under Rule 136 this Authority has been assigned power to get its orders monitored through the tax authorities of the Central or the State Governments. Hence, there is more than the adequate machinery required to implement the Anti-Profiteering measures and hence all the claims made by the Respondent on this ground are incorrect and hence they cannot be accepted.

100. In view of the reasons given in para supra the law settled in the cases of ***Commissioner of Income Tax Bangalore*** v. ***B. C. Srinivasa Setty (1981) 2 SCC 460***, ***Samsung (India) Electronics Pvt. Ltd. v. Commissioner of Commercial Taxes U.P. Lucknow 2018 [11] G.S.T.L. 367,*** and ***Union of India*** v. ***Suresh Kumar Bansal 2017 (4) G.S.T.L. J128 (S.C.)*** is not being followed.

101. It was also submitted that this Authority was itself using different methodologies to ascertain 'profiteering' in the cases filed before it. In this connection the Respondent has not cited the details of the cases

in which this Authority has determined different methodology on the same facts of the cases. The stand of this Authority has been repeatedly made clear that the above benefits have to be paused on every supply to every customer as per the provisions of Section 171 (1) and hence there is no ambiguity in its approach.

102. The Respondent has also contended that the DGAP has arrived at the figures of alleged profiteering on the basis of the difference between the ratio of ITC to turnover under the pre-GST and the post-GST periods and by using this formula correct quantum of profiteering could not be computed. In this connection it would be relevant to state that Section 171 (1) of the above Act requires that the benefit of additional ITC which a registered person has received in the post-GST period is required to be passed on. This benefit is also required to be passed on, on the basis of the payment made by a recipient i.e. the turnover. Therefore, computation of the ratios of ITC to turnovers for the pre-GST and post-GST period is required to be made so that the benefit can be passed on to every flat buyer proportionate to the payment made by him. Therefore, computation of the above ratios as has been made by the DGAP vide Table E supra is correct.

103. He has also claimed that the comparison of the above ratios was not appropriate for the reason that under the real estate sector, there was no correlation of turnover with the cost of construction or development of a project. The above plea of the Respondent is incorrect as there is correlation between the turnover and the ITC as he was discharging his GST output liability out of the ITC available to him on the basis of the turnover i.e. the cost realised by him from the buyers. Moreover, the benefit is to be passed on the additional ITC

proportionate to the payment made by a buyer and hence the above ratios are relevant. Therefore, the above claim of the Respondent cannot be accepted.

104. The Respondent has also contended that the DGAP has not taken in to account the project life cycle as the expenses were incurred throughout the lifecycle of the project. He has further contended that the turnover and the ITC would vary as per the market conditions and the rates of tax. The above claims of the Respondent are not correct as the benefit of ITC would be computed over the entire life cycle of the project keeping in view the entire ITC availed by the Respondent and the turnover raised by him during the life cycle of the project. The present investigation has covered the period from 01.07.2107 to 31.12.2018 only and hence, the benefit has also been computed for the above period only.

105. The Respondent has also stated that reversal of ITC in future due to receipt of Completion Certificate might also had a bearing on the ITC availed by him which was required to be considered. It is apparent from the Report of the DGAP that he has computed the benefit of ITC on the area sold and the turnover received on such area. He has not computed the benefit on the unsold area nor the Respondent is being asked to pass on the benefit on the unsold area and hence, the ITC relevant to this area would remain intact with him which he can reverse at the time of issue of the Completion Certificate. Hence the above contention of the Respondent is incorrect.

106. The Respondent has also submitted that there was no benefit arising on account of reduction in the rate of tax on supply of services

and hence, no benefit could be passed. However, it is mentioned that the benefit has to be computed on the entire amount of additional ITC availed by the Respondent which includes goods also. The Respondent has also availed benefit of lower prices while purchasing services and goods from his suppliers as they have also become entitled to the ITC. Hence the above arguments of the Respondent are not tenable.

107. It has further been submitted by the Respondent that he had estimated the additional benefit which would accrue to him in the present project based on the transitional stock and the reduction in prices on the purchases made by him and accordingly, he has passed on benefit of 3.35% however, the DGAP has ignored the same and has considered the ratio of ITC to the turnover of pre-GST and post-GST periods for calculating the benefit of additional ITC which would not yield the correct quantum of profiteering. As discussed supra the DGAP has correctly computed the ratios of ITC to turnovers for the pre and post GST period and hence the above contention of the Respondent is not correct.

108. The Respondent has also claimed that he has passed on benefit of 3.35% to the eligible customers by way of commensurate reduction in prices due to additional benefit of ITC. He has also furnished sample copies of the tax invoices and credit notes to substantiate his claim made vide his submissions dated 06.09.2019. However, perusal of the above documents shows that he has only made entry of 'Discount or GST credit passed back or GST benefit' in them and nowhere it has been mentioned that the above amount has been transferred on account of benefit of ITC. Therefore, this discount/GST

credit passed back/GST benefit cannot be considered to have been passed on due to the benefit of ITC as has been claimed. A typical entry made in respect of Mrs. Kalpana Joshi in her credit note issued on 14.10.2017, who has been allotted unit No. GCPT1A0903 in the above project by the Respondent, does not clarify that the amount mentioned in the credit note has been transferred on account of ITC benefit but it shows it as "Discount given to customer". The credit note issued to her again on 14.10.017 shows that entry of "GST Credit Passed Back" has been made in it. The tax invoices dated 16.02.2018, 16.04.2018., 22.05.2018, 28.08.018 and 01.11.2018 issued to her show entries of "Net charge Amount after GST Benefit". Such entries have been made in respect of other buyers also. By no stretch of imagination these entries can be construed to have been made on account of passing on of the benefit of ITC. In case the Respondent wanted to pass on the benefit of ITC to his customers he should have re-calibrated the prices of his flats after coming in to force of the GST and informed his buyers that he proposed to pass a particular amount as benefit to them through the demand notes/ tax invoices to be issued to them in future. He should also have supplied them the details of the computations made to determine the benefit of ITC. It may also be pointed out that the Respondent could not have passed benefit of 3.35% to all the buyers as it was to be determined on the basis of the area and the amount paid by each customer. Therefore, the above amount cannot be taken to have been passed on account of the ITC benefit.

109. The DGAP vide para 13 of his Report dated 25.06.2019 has also mentioned that the Respondent has claimed that he has passed on

benefit of 3.35% to the eligible customers. However he has observed in the above para that the Respondent inspite of repeated requests had not submitted the details of the benefit passed on and therefore, his claim had remained unsubstantiated. The DGAP again vide his supplementary Report dated 07.10.019 has reiterated that the Respondent had not submitted details of the benefit passed on by him despite repeated requests made vide his letters dated 01.05.2019 and 04.06.2019 and summons dated 11.06.2019. He has further mentioned that the buyer's details mentioned as proof of having passed on the benefit as per his submissions dated 20.09.2019 seemed to be inconsistent with the details of buyers submitted during the investigations e.g. for customer Mr. Ahmed Junaid Shareef (Customer Code- 10013771) total billing till 31st December, 2018 as per the Respondent's submissions was Rs. 24,66,747/- whereas, the Respondent vide his e-mail dated 19.06.2019 had submitted total billing as Rs. 23,72,434/-. He has also contended that the same was the case in respect of most of the other customers. It is apparent from the above that the Respondent had no evidence of passing on the benefit of ITC till the investigation Report was filed by the DGAP on 25.06.2019 whereas the credit note issued to Mrs. Joshi shows that the benefit was passed on 13.10.2017. Therefore, there is no doubt that these tax invoices and the credit notes have been prepared by the Respondent after 25.06.2019 and hence all his claims of having passed on the benefit of ITC are frivolous and hence they cannot be relied upon.

110. The Respondent has also contended that the period considered by the DGAP for the pre-GST period should have been from

September 2014 to June 2017 instead of the period from September 2014 to March 2016. However, the DGAP vide para 20 of his Report has stated that he had taken the above period as the Respondent had not received any consideration during the above period although he had availed ITC, therefore, the ratio of ITC to the turnover would be distorted in case the above period was considered as the amount of ITC could not be divided by zero amount of turnover. The above claim of the DGAP is correct since no consideration has been received by the Respondent during the above period. Hence the above period cannot be considered as it would provide skewed results.

111. The Respondent has also submitted that the objective behind considering the entire period of the project for computation of profiteering was that the ITC and its co-relation with turnover should be assessed at the broader periodic level rather than linking it with a particular period of the project. In this regard, reference was made by the Respondent to Rule 5 of the CENVAT Credit Rules, 2004 wherein refund of CENVAT credit was allowed in the ratio of export turnover to the total turnover for that particular relevant period. In this connection it would be appropriate to mention that the Respondent is required to pass on the benefit of ITC as per the provisions of Section 171 (1) as soon as he avails it himself. As the Respondent is discharging his GST output liability every month through the Returns filed by him from the ITC available to him he is also legally bound to pass on the benefit of ITC to his customers every month. He cannot employ two yardsticks while using the benefit of ITC himself and while extending the benefit to his buyers. In case he proposes to pass on the benefit of ITC after the completion of the project he should also avail the

same after the completion of the project. Therefore, the above benefit has to be passed on periodically as per the provisions of Section 171 (1) of the above Act and provisions of Rule 5 of the CENVAT Credit Rules, 2004 are not applicable in this regard.

112. The Respondent has also claimed that if the excluded period from April 2016 to June 2017 was added for calculation of ratio of ITC to turnover for the pre-GST period the same would be 3.79% and the ratio for the post-GST period would be 5.76% and hence, the profiteering would be 2.17% instead of ratio of 4.25% computed by the DGAP vide Table-E of his Report. As mentioned above the period from April 2016 to June 2017 cannot be taken in to account for calculation of the above ratio as no turnover was received during the above period, therefore, the ratio of 1.54% calculated by the DGAP for the pre-GST period from April 2014 March 2016 is correct and consequently the ratio of profiteering of 4.25% is also correct. Accordingly, his claim that he has passed on benefit of 3.35% as compared to the ratio of 2.17% is incorrect and hence the same cannot be relied upon.

113. The Respondent has further claimed that he had turnover of Rs. 4,81,176/- during the period from April 2016 to March 2017. However, no reliable evidence supported by the entry of the above amount in his returns has been produced by the Respondent and hence, the same cannot be accepted.

114. The Respondent has also contended that the DGAP has wrongly computed the profiteered amount as he should have taken the relevant period vis-à-vis the recalibrated base price, excluding the GST amount. However, the above claim of the Respondent is not

tenable since he has not only charged extra amount from his buyers which he should not have charged due to commensurate reduction in the prices as he had availed benefit of additional ITC, by recalibrating his prices but he has also illegally charged GST on this extra amount. Had he not charged additional GST his customers would have paid less prices. Since, he has denied the benefit of ITC by charging additional tax it has been rightly included in the profiteered amount.

115. The Respondent has also stated that the customers who had booked flats from 01.07.2017 to 01.02.2018, were passed on GST benefit of 6% which was factored in the prices which was duly recorded in the cost sheets itself which was part of Builder Buyer Agreement. He has also enclosed copy of cost sheet of the Applicant No. 1 who had booked the flat on 19.11.2017. However, the above claim of the Respondent is not correct since the above Applicant in his application dated 12.10.2018 has clearly stated that he as well as all the other flat buyers were not passed on the benefit of ITC by the Respondent. He has reiterated his above claim vide his submissions filed before this Authority on 17.07.019. The present investigation also shows that the Respondent has not passed on the benefit of ITC to the above Applicant as well as his other customers. Hence, the above claims of the Respondent cannot be accepted as there is no credible and irrebutable evidence to prove them.

116. The Respondent vide his submissions dated 27.09.2019 and 07.11.019 has pointed out that there were some minor difference in the figures submitted by him during the investigation and during the course of the present proceedings. However, all these differences

show that the Respondent has not produced correct figures during the investigation and the present proceedings and has tried to mislead.

117. Therefore, It is evident from the facts narrated above that the ratio of input tax credit as a percentage of the turnover that was available to the Respondent during the pre-GST period from April, 2014 to March, 2016 was 1.54% and during the post-GST period from July, 2017 to December, 2018 the same was 5.79% and therefore, during the post-GST period the Respondent has benefited from the additional input tax credit to the extent of 4.25% [5.79% (-) 1.54%] of the turnover as is evident from the perusal of Table-E of the Report dated 25.06.2019 submitted by the DGAP. It is also clear from the Table-F submitted by the DGAP that the additional input tax credit of 4.25% of the turnover should have resulted in the commensurate reduction in the base prices as well as cum-tax prices charged by the Respondent from his buyers. Therefore, as per the provisions of Section 171 (1) of the CGST Act, 2017, the Respondent is required to pass on the benefit of such additional input tax credit to the recipients. Since, both the above Tables have been prepared by the DGAP on the basis of the Returns filed by the Respondent and the information submitted by the Respondent himself the computations made in the above Tables are taken to be correct and can be relied upon.

118. Accordingly, the excess amount collected by the Respondent from the above Applicant and other home buyers during the period from 01.07.2017 to 31.12.2018 or the amount of benefit of input tax credit which is required to be passed on by the Respondent to the recipients or the profiteered amount is determined as **Rs. 9,03,44,071/-** which includes 12% GST on the base profiteered

amount of Rs. 8,06,64,349/-, in terms of Rule 133 (1) of the CGST Rules, 2017. The home buyer and the unit no. wise break-up of this amount has been given in **Annexure-18** of the Report furnished by the DGAP on 25.06.2019. This amount also includes profiteered amount of Rs. 2,23,696/- including GST on the base profiteered amount of Rs. 1,99,729/- which is the benefit of input tax credit required to be passed on to the Applicant No.1, mentioned at Serial No. 86 of Annexure-18 mentioned above. The construction service has been provided by the Respondent in the State of Maharashtra only.

119. It is also apparent from the above discussion that computation of profiteered amount has been done in respect of 473 home buyers whereas the Respondent has booked 493 units till 31.12.2018. 20 customers who have booked flats and also paid the booking amounts in the pre-GST period, have not paid any amount during the post-GST period from 01.07.2017 to 31.12.2018 (period under investigation). Therefore, the benefit of input tax credit in respect of these 20 units is required to be calculated when the consideration is received from such buyers taking into account the proportionate input tax credit in respect of such units.

120. Accordingly, the Respondent is directed to commensurately reduce the prices of his units as per the provisions of Rule 133 (3) (a) of the above Rules. He is further directed to pass on the benefit of ITC of Rs. 9,03,44,071/- to the above 473 recipients including the Applicant No. 1 as per the details submitted by the DGAP vide Annexure-18 of his Report alongwith the interest @ 18% PA to be paid from the date when the above amount was collected by the

Respondent from them till the amount is paid as per the provisions of Rule 133 (3) (b) of the CGST Rules, 2017 as all the buyers are identifiable. The above amount shall be paid by the Respondent within a period of 3 months from date of passing of this order failing which it shall be recovered by the concerned Commissioner CGST/SGST as per the provisions of the CGST/SGST Acts.

121. Since, the present investigation pertains to the period of 01.07.2018 to 31.12.018 any additional benefit which may accrue to the Respondent in future shall also be passed on by him to the eligible buyers failing which they shall be entitled to approach the Screening Committee on Anti-Profiteering Maharashtra for claiming the above benefit. The concerned Commissioner shall also ensure that the benefit of ITC is passed on to the eligible buyers.

122. It is also evident from the perusal of the facts of the present case that the Respondent has denied benefit of ITC to the buyers of the flats and the shops being constructed by him in his Project 'Godrej City Panvel Phase-I' in contravention of the provisions of Section 171 (1) of the CGST Act, 2017 and has apparently committed an offence under Section 171 (3A) of the above Act and therefore, he is apparently liable for imposition of penalty under the provisions of the above Section. Accordingly, a Show Cause Notice be issued to him directing him to explain 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 02.07.2019 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.

123. It is also revealed from the perusal of Table-'A' mentioned in para 8 (a) of the Report dated 25.06.2019 furnished by the DGAP that the Respondent has admitted that he is executing two more projects viz. 'Golf Meadows Godrej City, Panvel Phase II project' and the 'EWS project'. It is also apparent from para 8 (c) of the above Report that the Respondent has also admitted that he has availed benefit of CENVAT credit in the pre-GST period for the above two projects. The Respondent has also furnished the details of the CENVAT credit and the ITC availed by him on these projects during the pre-GST and the post-GST periods in the Tables given supra vide his submissions dated 06.09.019. Therefore, this Authority has reasons to believe that the Respondent has availed the benefit of ITC during the post-GST period which he is bound to pass on to the buyers of the above projects. Therefore, this Authority under Rule 133 (5) of the CGST Rules, 2017 quoted supra directs the DGAP to conduct investigation to find out whether the Respondent has availed such benefit in respect of both the above projects and is required to pass it on as per the provisions of Section 171 (1) of the CGST Act, 2017 and submit his Report as per the provisions of the above Rule.

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

125. A copy each of this order be supplied to both the Applicants, the Respondent, Commissioners CGST/SGST Maharashtra as well as the Principal Secretary (Town & Planning), Government of Maharashtra 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

24.12.19

(A. K. Goel)
Secretary, NAA

File No. 22011/NAA/52/Caroa/2019/7461-7467 Dated: 24.12.2019

Copy To:-

1. M/s Caroa Properties LLP, Godrej One, 5th floor, Pirojshanagar, Eastern Express Highway, Vikhroli (East), Mumbai-400079.
2. Shri Potnoor Naveen, B 503, B Wing, Gokuldham, Plot No. 3, Sec-35D, Kharghar, Navi Mumbai – 410210.
3. Chief Commissioner, CGST, Mumbai Zone, GST Building, 115 M.K. Road, OPP, Churchgate Station, Mumbai- 400020.
4. Commissioner, Commercial Taxes, Office of the Commissioner of State Taxes, 8th floor, Goods and Services Tax (GST) Bhavan, Mazgaon, Mumbai - 400010.
5. Principal Secretary, Urban Development Department, 4th Floor, Main Building, Mantralay, Hutatma Rajguru Chowk, Mumbai.
6. 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.
7. NAA Website/Guard File.