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

Case No.	3/2020
Date of Institution	08.07.2019
Date of Order	07.01.2020

In the matter of:

1. Smt. Shubhra Vipin Gajbhiye, R/o Flat No. 202, Megha Apartment, Narendra Nagar, Somalwada, Nagpur-440014.
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 Pyramid Arcades Pvt. Ltd., Head Office: 202, Gurukrupa Apartment, Somalwada Square, Wardha Road, Nagpur-440022.

Respondent

Quorum:-

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

Present:-

1. None for the Applicants.
2. Sh. Shailesh Chandak, Authorised Representative, for the Respondent.

ORDER

1. The present Report dated 28.06.2019 has been received from the Applicant No. 2 i.e. the Director General of Anti-Profiteering (DGAP) after detailed investigation under Rule 129 (6) of the Central Goods & Service Tax (CGST) Rules, 2017. The brief facts of the case are that vide his application dated 04.09.2018 filed before the Standing Committee on Anti-profiteering under Rule 128 (1) of the CGST Rules, 2017, the Applicant No. 1 had alleged profiteering by the Respondent in respect of purchase of Flats No. 6 in Respondent's project "Pyramid City 5" situated at Beas, Nagpur. The above Applicant had also alleged that the Respondent had not passed on the benefit of Input Tax Credit (ITC) availed by him by way of commensurate reduction in the price of the above flats. The aforesaid reference was considered

by the Standing Committee on Anti-profiteering, in its meetings held on 13th December, 2018, wherein it was decided to forward the same to the DGAP to conduct detailed investigation in to the complaint according to Rule 129 (1) of the CGST Rules, 2017.

2. The Applicant No. 1 submitted a copy of her communication with the Respondent regarding passing on of the benefit of input tax credit along with her application.

3. On receipt of the recommendation from the Standing Committee on Anti-profiteering, the DGAP found that the Applicant No. 1 had booked a flat in the Respondent's project "Pyramid City -5", in the pre-GST era and had paid the booking amount of ₹ 50,000, vide Cheque dated 28.03.2017 and the first demand letter/invoice was raised by the Respondent in the post-GST era. Thus, the DGAP issued Notice dated 16.01.2019 under Rule 129 (3) of the above Rules, asking the Respondent to intimate as to whether he admitted that the benefit of ITC had not been passed on by him to the Applicant No. 1 by way of commensurate reduction in the price of the flat and in case it was so, to suo-moto compute the quantum of the same and mention it in his reply to the Notice and furnish the same along with the supporting documents. The Respondent was given opportunity to inspect the non-confidential evidence/information furnished by the Applicant No. 1 during the period between 21.01.2019 to 23.01.2019 in accordance with Rule 129 (5) of the above Rules but the Respondent did not avail of the said opportunity. Vide e-mail dated 17.06.2019, the Applicant No. 1 was also given opportunity to inspect the non-confidential documents/reply submitted by the Respondent on 24.06.2019, or

25.06.2019. However, the Applicant No. 1 did not avail of the said opportunity.

4. The DGAP has covered the period from 01.07.2017 to 31.12.2018 in his investigation Report dated 28.06.2019. The DGAP, vide his letter dated 14.03.2019, has requested to extend the time limit to complete the investigation before this Authority. The Authority, vide its order dated 19.03.2019 has extended the time limit for three months in terms of Rule 129 (6) of the above Rules.

5. In his Report dated 28.06.2019, the DGAP has reported that the Respondent had submitted his replies along with the required information and supporting documents to the DGAP vide his letters/emails dated 11.02.2019, 20.02.2019, 21.02.2019, 02.05.2019, 06.06.2019, 07.06.2019 and 20.06.2019. The submissions of the Respondent made before the DGAP are as under:-

a) At the time of commencement of GST, approximately 80% to 85% of the project had already been completed and thus the quantum of input tax credit available to him in the Post-GST period could not be much.

b) The Respondent, vide his letter dated 07.06.2019, had provided a copy of the advertisement published in the local newspapers on 11.03.2017, wherein in anticipation of the scheduled implementation of GST i.e. on 01.04.2017, he had announced reduction in prices due to GST input tax credit availability. However, GST was implemented w.e.f. 01.07.2017 instead of

the scheduled date. The Respondent had contended that anticipating additional benefits of input tax credit under GST, he had proactively publicized his intention to pass on such additional benefit by way of reduction in prices.

c) The Respondent had submitted a comparative chart showing the units sold post-GST and the nearest comparable unit sold in the pre-GST period, to show that due to GST implementation, prices had been reduced by him.

d) The Respondent had submitted that the Applicant No.1 had made a payment of ₹50,000 only on 28.03.2017, as initial booking amount, but she did not register her agreement after paying such initial booking amount in the pre-GST period. Upon registration of the Agreement to sale on 29.08.2017 in the Post-GST period, demand was raised on the Applicant No. 1 on 02.09.2017, after deducting the initial booking amount paid earlier and the Respondent had no choice but to charge 12% GST on the said amount.

e) The Respondent, vide his letter dated 07.06.2019, had also contended that he had already reduced the price by more than the amount of additional input tax credit in the GST era, either by way of reduction in prices or by offering various discounts on other charges to be collected from his recipients. In support of this contention the Respondent had also submitted sample copies of sale deeds for the units sold in the GST era at

reduced prices as compared to similar units sold in the pre-GST era.

f) The Respondent had also submitted a copy of his Agreement with the Applicant No. 1, entered into on 29.08.2017, after GST implementation, wherein it was provided that the agreed upon price of 26,85,000/- would be exclusive of taxes.

g) The Respondent had also submitted a copy of e-mail to the Applicant No. 1 on 14.01.2018 to the DGAP, wherein the Applicant No. 1 was informed that as the project was in the last stage, physical possession of the flat would be handed over in the month of March, 2018. A detailed statement of payments made by the Applicant No. 1 and outstanding amount due at time of possession was also furnished by the Respondent. The Respondent had also submitted a copy of his demand letter dated 17.03.2018, requesting the Applicant No. 1 to submit the balance amount and the particulars of payments made by him. The Respondent had also submitted the details of the payment plan agreed upon with the Applicant No. 1 at the time of registering the agreement of sale in respect of flat no. A-606, on 29.08.2017, which were furnished by the DGAP as given in table-'A' below:-

Table-'A' (Amount in Rs.)

S.No.	Particulars	Amount (in ₹)
1	At the time of booking	₹ 50,000
2	to be paid on execution of agreement	₹ 7,55,000
3	On completion of plinth of building/wing where apartment is located	₹ 4,02,000

4	On completion of slab and stilts of building/wing where apartment is located	₹ 6,71,000
5	On completion of walls, internal plaster, floorings, doors and windows of building/wing where apartment is located	₹ 1,34,000
6	On completion of sanitary fittings, staircases, lift wells, lobbies, etc. up to the floor level of the said apartment	₹ 1,34,000
7	On completion of external plumbing, plaster, elevation, terraces of building/wing where apartment is located	₹ 1,34,000
8	On completion of lifts, water pumps, electrical fittings, electro mechanical and environmental requirements, entrance lobby/s, plinth protection, paving of areas appertain and other requirements as mentioned in agreement of Sale	₹ 2,68,000
9	Handing over of possession	₹ 1,37,000
Total		₹ 26,85,000

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

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

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

c) Copy of Electronic Credit Ledger for the period01.07.2017 to 31.12.2018.

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

e) Copies of all demand letters, sale agreement/contract issued to the Applicant No. 1.

f) CENVAT/input tax credit registers for the period April, 2016 to December, 2018.

g) Copies of Balance Sheets for FY 2016-17 & 2017-18.

h) Copy of project report submitted to the RERA.

i) Details of VAT, Service Tax and GST for the periods FY 2016-17, 2017-18.

j) List of home buyers in the project "Pyramid City 5".

7. In his Report dated 28.06.2019, the DGAP has stated that all the documents placed on record were carefully examined and it was found that the main issues for determination were as to whether there was reduction in the rate of tax or benefit of ITC on the supply of construction service by the Respondent after implementation of the GST w.e.f. 01.07.2017 and in case it was so, whether the Respondent had passed on the above benefits to the home buyers as per the provisions of Section 171 of the CGST Act, 2017 or not.

8. The DGAP has also reported that para 5 of Schedule-III of the Central Goods and Services Tax Act, 2017, defining activities or transactions which shall be treated neither as a supply of goods nor a supply of services, reads as "Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building". Further, Clause (b) of para 5 of Schedule II of the Central Goods and Services Tax Act, 2017 reads as "(b) construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier". In the light of these provisions, the DGAP has reported that the ITC pertaining to the units which were under construction but not sold was provisional ITC that may be required to be reversed by the Respondent, if such units

would remain unsold at the time of issue of Completion Certificate or first occupancy, whichever is earlier, in terms of Section 17 (2) & Section 17 (3) of the Central Goods and Services Tax Act, 2017 which read as under:-

> 17 (2) Where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies.
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> 17 (3) The value of exempt supply under sub-section (2) shall be such as may be prescribed, and shall include supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.

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

9. The DGAP has also reported that prior to 01.07.2017, i.e., before GST was introduced, the Respondent was eligible to avail CENVAT credit of Service Tax paid on the input services. However, CENVAT credit of Central Excise duty paid on the inputs was not admissible as per the CENVAT Credit Rules, 2004, which was in force at the material time. Moreover, since the Respondent was paying VAT @1%under Maharashtra VAT Composition Scheme, he was not eligible to avail input tax credit of VAT paid on the inputs. Further, post-GST, the Respondent could avail the input tax credit of GST paid on all the inputs and input services. From the information submitted by the Respondent for the period April, 2016 to December, 2018, the details of the input tax credit availed by him, his turnover from the project "Pyramid City 5" and the ratio of input tax credit to the turnover, during the pre-GST (April, 2016 to June, 2017) and post-GST (July, 2017 to December, 2018) periods, the DGAP has furnished Table-'B' as below:-

Table-'B' (Amount in Rs.)

S. No.	Particulars	(Pre-GST) April, 2016 to June, 2017	(Post-GST) July, 2017 to Dec, 2018
1	CENVAT credit of Service Tax Paid on Input Services (A)	63,71,323	-
2	Input Tax Credit of VAT Paid on Purchase of Inputs (B)	-	-
3	Total CENVAT/Input Tax Credit Availed pre-GST (C)= (A+B)	63,71,323	-
4	Input Tax Credit of GST Availed (D)	-	1,92,72,708
5	Total Turnover(As per Home-buyers list) (E)	17,02,94,080	22,29,89,879
6	Total Saleable Area in Sq.ft. (F)	13,309	13,309
7	Residential Area sold relevant to Turnover in Sq. ft. (G)	9,824	11,217
8	ITC relevant to Sold Area (H) = (C*G/F) or (D*G/F)	47,02,974	1,62,43,291
9	**Ratio of CENVAT/ Input Tax Credit to Turnover (I)= (H/E*100)**	**2.76%**	**7.28%**

10. The DGAP has reported from the above Table-'B' that it was evident that while the ITC, as a percentage of the total turnover, that was available to the Respondent during the pre-GST period (April, 2016 to June, 2017), was 2.76% and during the post-GST period (July, 2017 to December, 2018), it was 7.28%. This clearly confirmed that post-GST, the Respondent had been benefited from additional ITC to the tune of 4.52% [7.28% (-) 2.76%] of the turnover.

11. The DGAP has also reported that the records submitted by the Respondent show that he had the requisite permission to construct a total of 43 bungalows/row houses spread over 8 blocks as also 114 residential flats and 2 shops spread over 3 towers. The DGAP has further stated that the claim of the Respondent that he had reduced the prices of units sold in the post-GST period, by approx. 5% appeared to be correct in as much as the data/records furnished by the Respondent manifest that when compared to the pre-GST prices of the units sold by the Respondent with the prices of similar units booked in the post-GST period, there was an apparent reduction in the prices. The DGAP has further reported that a chart showing the calculation of the amount of benefit of input tax credit that had to be passed on, i.e. @ 4.52% of the basic price and the amount actually passed on by way of reduction in price of the units sold in the post-GST period was Annexed to the Report as Annexure-13 by the DGAP. The DGAP has added that since the Applicant No. 1 had booked the flat in the post-GST period after the rates had already been reduced by the Respondent on account of estimated benefit of additional input tax

credit by more than 4.52% of the basic price, the Applicant No. 1 did not appear to be eligible for any further benefit. However, in respect of the units which were already booked/ sold in the pre-GST era, the Respondent could not establish that he had actually reduced the basic prices of the units. Further, on examination of records, it was observed by the DGAP that while the booking amount was received and the booking form was signed between the Applicant No. 1 and the Respondent on 28.03.2017 i.e. prior to the implementation of GST, there was no mention in the said form that the price of the flat had factored the benefit of additional input tax credit in the post GST period. The DGAP has further reported that the Respondent was required to pass on the benefit of the additional input tax credit to his unit buyers who had booked their units in the pre-GST period and hence, for the purpose of calculation of profiteering, the turnover from the units booked in the pre-GST period has only been taken into consideration.

12. The DGAP has further stated that the Central Government, on the recommendation of the GST Council, had levied 18% GST (effective rate was 12% in view of 1/3rd abatement for land value) on construction service, vide Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017. Accordingly, the DGAP has examined the profiteering by comparing the applicable tax rate and input tax credit available to the Respondent during the pre-GST period (April, 2016 to June, 2017) when Service Tax @ 4.5% and VAT@ 1% were payable (total tax rate was 5.5%) with the post-GST period (July, 2017 to

September, 2018) when the effective GST rate was 12% on the gross value. Accordingly, on the basis of the figures contained in Table-'B' above, the comparative figures of input tax credit availed/available as a percentage of the turnover in the pre-GST and post-GST periods, and the recalibrated basic price as well as the apparent excess collection (profiteering) during the post-GST period in respect of the units booked in the pre-GST period, were tabulated by the DGAP as in table-'C' below:-

Table-'C' (Amount in Rs.)

S. No.	Particulars		Pre-GST	Post- GST
1	Period	A	April,2016to June,2017	July,2017 to Dec, 2018
2	Output tax rate (%)	B	5.50%	12.00%
3	Ratio of CENVAT/VAT/GST Input Tax Credit to Total Turnover as per Table - B above (%)	C	2.76%	7.28%
4	Increase in input tax credit availed post-GST (%)	D	-	4.52%
5	**Analysis of Increase in input tax credit:**			
6	Total Basic Demand during July, 2017 to December, 2018 FROM THE units booked pre-GST	E		10,09,98,110
7	GST @12%	F= E*12%		1,21,19,773
8	Total demand	G= E+F		11,31,17,883
9	Recalibrated Basic Price	H=E*(1-D) or 98.49% of E		9,64,32,995
10	GST @12%	I=H*12%		1,15,71,959
11	Commensurate demand price	J=H + I		10,80,04,955
12	**Excess Collection of Demand or Profiteered Amount**	**K=G – J**		**51,12,928**

13. The DGAP has observed from the above Table-'C' that the additional ITC of 4.52% of the turnover should have resulted in commensurate reduction in the base price as well as cum-tax price. Therefore, in terms of Section 171 of the Central Goods and Services Tax Act,

2017, the benefit of the additional ITC was required to be passed on by him to the recipients.

14. On the basis of the aforesaid CENVAT/ITC in the pre-GST and post-GST periods and the demands raised by the Respondent on the Applicant No. 1 and other home buyers (who had booked the flats in the pre-GST period) towards the value of construction on which GST liability @ 12% was discharged by the Respondent during the period 01.07.2017 to 31.12.2018, the amount of benefit of input tax credit not passed on or in other words, the profiteered amount was computed by the DGAP as ₹ 51,12,928/- which included GST @12% on the base profiteered amount of ₹ 45,65,114/-. The home-buyers and unit no. wise break-up of this amount has been given in Annexure-14 of the DGAP Report. It was also observed that the Respondent had supplied the construction services in the State of Maharashtra only.

15. The DGAP has further mentioned in his Report that above computation of profiteering was made only with respect to 100 home buyers, including the Applicant No. 1, who had booked their units prior to the implementation of GST. Out of the 153 units (out of a total 159 units) booked till 31.12.2018, 43 buyers of residential units, who had booked their flats in the post-GST period at the reduced price, had not been considered for the purpose of calculation of profiteering. Out of the 110 units booked in pre-GST period, buyers of 10 units had not paid any consideration during the post-GST period from 01.07.2017 to 31.12.2018 (period covered by the investigation) and hence, these units have been excluded from the current computation because if the

input tax credit in respect of these 10 units had also been considered for the computation of profiteering, the computation of input tax credit as a percentage of turnover would be distorted. Therefore, the benefit of input tax credit in respect of these 10 units has to be computed in a similar manner when consideration would be received in respect of such units.

16. The DGAP has finally reported that the benefit of additional input tax credit of 4.52% of the turnover has accrued to the Respondent which was required to be passed on to the Applicant No. 1 and other eligible recipients. Section 171 of the Central Goods and Services Tax Act, 2017 appeared to have been contravened by the Respondent, in as much as the benefit of additional input tax credit @4.52% of the demand raised by the Respondent during the period 01.07.2017 to 31.12.2018, has not been passed on to the Applicant No. 1 and 99 other recipients. On this account, the Respondent appeared to have realized an excess amount of ₹1,33,503/- from the Applicant No. 1 which included both the profiteered amount @ 4.52% of the basic price and GST @12% on the said profiteered amount. Further, the investigation revealed that the Respondent appeared to have realized an excess amount of ₹ 49,79,425/- which included both the profiteered amount @4.52% of the pre-GST basic price and GST on the said profiteered amount, from 99 other eligible unit buyers who were not applicants in the present proceedings. The said 99 unit buyers were identifiable since the Respondent had provided their names and addresses along with the unit no. allotted to each of them. Therefore, it

appeared that the additional amount of ₹49,79,425/- was required to be returned to such other eligible recipients apart from the Applicant No. 1.

17. The DGAP has also stated that the period covered in the present investigation is from 01.07.2017 to 31.12.2018. Profiteering, if any, for the period post December, 2018, has not been examined in the Report as the exact quantum of ITC that would be available to the Respondent in future cannot be determined at the stage, since the construction of the project was yet to be completed. He has further stated that the provisions of Section 171 (1) of the Central Goods and Services Tax Act, 2017 requiring that "a reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices", have been contravened by the Respondent in the present case.

18. The above Report was considered by the Authority in its meeting held on 09.07.2019 and it was decided that the Applicant No. 1 and the Respondent be asked to appear before the Authority on 06.08.2019. The Respondent was issued notice on 10.07.2019 to explain why the above Report of the DGAP should not be accepted and his liability for violating the provisions of Section 171 of the CGST Act, 2017 should not be fixed. During the course of the hearings no one appeared for the Applicant No. 1 while the Respondent was represented by Sh. Shailesh Chandak, Authorised Representative.

19. The Respondent vide his submissions dated 23.08.2019, 12.11.2019, 21.11.2019, 29.11.2019, 10.12.2019 and 14.12.2019 has made following contentions:-

a) The Respondent has submitted that the intention of introducing GST Law was to give seamless credit to assessee. The intention of Government was to pass on the benefit of ITC in respect of those goods/services on which the assessee was not eligible to avail ITC in pre GST period. As per natural law of justice, profiteering should have been calculated on the basis of extra/incremental amount of ITC accrued to him in the post-GST era as compared to the pre-GST era.

b) The Respondent has submitted that neither did the CGST law had prescribed any methodology or procedure for determining the amount of profiteering nor the Rules prescribed any method of formula for the calculation of profiteering amount. The CGST Act also did not define the wording 'commensurate reduction in prices' and hence it left the whole burden on the assessee to determine its own methodology and formula for computation of amount of ITC benefit accrued to him. The Respondent has added that he had already reduced the cost of per unit of flat much more than the benefit that accrued to him on account of ITC.

c) The Respondent has further elaborated that he had passed on the benefit of GST input tax credit to his customers either by way of reduction in unit price or by way of various discounts in

other charges to be collected from them. The reduction in price per unit was not at all commercial decision but the same was done on the premise that he was eligible for extra input tax credit which was not available in pre GST era. He has further submitted that his intention of passing on the ITC benefit was apparent from the advertisement that he had published in newspapers in the month of March, 2017 and pamphlet that he had distributed at a number of places, in and around the city, informing the unit-buyers about the reduction of price per unit on account of availability of GST input credit.

d) The Respondent has further submitted details of the reduction in the per unit cost of units in the post-GST period on account of availability of ITC, comparing the same with the pre-GST period, which are as under:-

Flat No.	Area of flat in sq.mt.	Date of booking	Price (Rs. In Lakh)	Remark
A-606 Unit of complainant	60.850	28/03/2017	26.85	Price reduced due to GST implementation.
B-606	60.850	10/11/2015	28.46	Nearest comparable unit

e) The Respondent has further submitted that the period considered for comparison was not equal in as much as the DGAP had compared the data of 15 months of pre GST era with data of 18 months of post GST era.

f) The Respondent has further contended that the formula of the difference of the ratio of Input Tax Credit / Taxable Turnover in

the post GST and pre-GST regime was not correct for the following reasons:-

i. Taxable Turnover would vary as per the market conditions and it was difficult to maintain the same ratio of turnover in proportion to procurement in a real estate sector.

ii. Project Life cycle of construction projects effect had been totally ignored and it was assumed that uniform expenses were being incurred by him throughout the lifecycle based on the formula adopted by this Authority.

iii. Input Tax Credit was an absolute number which would vary as per the Govt. rate policies. A lot of goods had been moved from 28% to 18% tax-rate slab. This had not resulted into any benefit to him as a buyer of raw materials/inputs as he was entitled to credit in both the scenarios. The ratio of ITC/turnover calculated by the DGAP would have varied significantly had this factor been taken into account while computing the amount of profiteering.

iv. The ratio of ITC availed to taxable turnover may vary from time to time and single formula cannot fit in all such cases. As such this Authority should undertake to recover the excess passed-on benefit from customers in future if this methodology is followed and later it is found that the ratio has changed.

v. Dealer pays GST amount over and above basic cost, and he gets ITC of what he pays separately as GST. In this system, his basic cost remains same whereas ITC amount and consequent ITC ratio vary significantly. This ratio of ITC to taxable turnover is irrelevant and has no impact on the profit amount as profit remains the same in all cases, as referred in the below Table:-

Cases	GST Rate	Cost of Input	GST Amt.	Total Bill Amt.	ITC under GST	Net Cost to Dealer	Sale Price	Gross Profit	ITC Ratio as used by department
1	28%	100	28	128	28	100	120	20	23.33%
2	18%	100	18	118	18	100	120	20	15.00%
3	12%	100	12	112	12	100	120	20	10.00%
4	5%	100	5	105	5	100	120	20	4.17%

vi. The unsold inventory of units on which the Respondent may have to reverse the input credit on a later date i.e. on receipt of completion certificate or first occupancy is a critical factor which needs to be given appropriate weight age while computing amount of profiteering.

vii. It is pertinent that refund of unutilized ITC to builder is not permitted at the completion of the project due to specific restrictions effected through Notification 15/2017- Central Tax dated 28.06.2017.

g) The Respondent has further submitted that the DGAP has computed the amount profiteered as Rs. 51,12,928/-, which comprised Rs. 45,65,114/- as basic price and Rs. 5,47,814/- as

GST collected thereon. Assuming but not accepting these figures, if Rs. 51,12,928 would be refunded to the home buyers, Rs. 5,47,814 which were already deposited in Government treasury as GST in due course should not be counted in the profiteering amount.

h) The Respondent has submitted that during the period under consideration he had only one ongoing project.

i) The Respondent has also submitted that he had not claimed any carry forward credit in TRAN-1/TRAN-2 Returns. Further he had submitted that during the period under investigation, no reversal of ITC was done by him.

j) The Respondent has also submitted that during the period under investigation 143 units were sold by him and 16 units remained unsold. Details of the total number of units in the project are as under:-

Type of unit	Numbers	Area Sq.Mt.
Bungalow	43	5828.350
Flats	114	7282.750
Commercial unit	2	197.720
Total	159	13308.82

k) The Respondent has also submitted that the construction work of the said project had been completed and the occupancy certificate was received in the month of June 2019.

l) The respondent has also submitted the following documents and information:-

i. Detailed statement showing Turnover as per statutory returns & ITC/CENVAT Credit availed for the period from 01/04/2016 to 31/12/2018.

ii. List of payment received from buyers.

iii. Balance sheets for the F.Y. 2016-17, 2017-18 & 2018-19.

iv. Copy of registry of land in the name of the Respondent.

20. The submissions filed by the Respondent were forwarded to the DGAP vide Order dated 25.11.2019 and 03.12.2019 for clarifications under Rule 133(2A) of the CGST Rules, 2017. The DGAP has filed his clarifications dated 11.12.2019 on the submissions of the Respondent as follows:-

a) On the issue raised by the Respondent that the Profiteering should have been calculated on the basis of extra/incremental amount of Input Tax Credit which was available to builder in GST era, the DGAP has clarified that the investigation Report dated 28.06.2019 had taken into account all the details and evidence supplied by the Respondent. The additional benefit which the Respondent got in Post GST era on account of Input Tax Credit had been taken into consideration for calculation of profiteering and it addressed the concern of the Respondent.

b) On the issue raised by the Respondent on the methodology adopted by the DGAP for calculation of profiteering, the DGAP

has clarified that the procedure and methodology for determination of profiteering and intent thereof were determined by this Authority on case to case basis by adopting the most appropriate and accurate method based on facts and circumstance of each case as well as the nature of the goods and services supplied. There could not be any fixed mathematical formulations/methodology for determination of quantum of benefit to be passed on which could cover different sectors of the economy and each case has been decided on its specific facts and merits.

c) On the issue raised by the Respondent that the DGAP in his report had wrongly compared data of 15 months of pre-GST with data of 18 months of post GST for the determination of profiteering, the DGAP has clarified that ratio of Input Tax Credit to turnover for the period just before introduction of GST was compared with the ratio of GST period to ascertain the benefit of Input Tax Credit available to the Respondent. In the post GST era the Input Tax Credit benefit was available across the goods & services in the Real Estate Sector. Comparison of equal period of pre-GST era to equal period of post-GST had no logic in the calculation of profiteering as it had nothing to do with the quantum of credit in pre-GST period rather it was based upon additional amount of credit which was available to the Respondent.

d) On the issue raised by the Respondent that the formula of the difference of the ratio of Input Tax Credit/Taxable Turnover in

post GST & pre-GST regime did not seem to be appropriate, the DGAP has clarified that in terms of Section 171(1) of the CGST Act, 2017, "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." Hence, the Anti-profiteering provisions are not meant to curb the profit margins of a supplier. It is a mechanism to pass on the benefit to the recipients which the government has decided to pass on to the consumers by way of reduction in tax rate of the goods/Services or increased benefit of Input Tax Credit. Thus, the additional benefit that has accrued to the supplier in terms of Section 171 of CGST Act, 2017 had to be passed on to the recipients of services. Further, the costing of goods/services was not looked into by the DGAP in its investigation. In this regard, methodology of DGAP had been consistent throughout in all its reports involving allegation of profiteering in cases of similar nature.

e) On the issue raised by the Respondent that only proportionate ITC in respect of sold flats should have been considered, the DGAP has clarified that this aspect had been taken into account as ITC of only sold flats was taken into consideration. In this regard the investigation Report wherein area sold relevant to turnover and ITC relevant to sold area had been taken is clearly depicted in Table 'B'. Further, it was clearly mentioned in the investigation Report that profiteering, if any, for the period post December, 2018 had not been examined.

Also, the eligibility of refund of excess credit had not been examined for calculation of profiteering.

21. The clarifications dated 11.12.2019 filed by the DGAP were supplied to the Respondent to file further submissions, if any. The respondent has filed submissions dated 14.12.2019 on the clarifications of the DGAP as follows:-

a) The Respondent has submitted that he had reduced the selling prices of the units in the month of March itself as GST was initially scheduled to be implemented from 01/04/2017, but the same was deferred by the Government due to some technical reasons. The facts that Respondent had reduced the selling price by more than 5%, as compared to the previous selling price in the month of March 2017 and that this reduction was ignored by DGAP while calculating the profiteering amount, though DGAP had acknowledged the said fact in his report dated 28/06/2019. The Respondent has further submitted that he had already reduced the unit sale price of the Applicant's flat much more than the benefit that has accrued on account of ITC in the post-GST period.

b) The Respondent has further contended that the intention of the Applicant No. 1 was to blackmail him and such spurious practice should not be encouraged by the Government authorities. He has further added that the investigation authorities should restrict their investigation to the particular

transaction which was the subject matter of the complaint of the Applicant No. 1 and not to entire company/project.

c) The Respondent has also submitted that he had, time and again, represented that profiteering, if any, should have been calculated only on the incremental input tax credit available to him in the post GST era. He has further submitted that the DGAP, while calculating the difference in ratio of ITC in pre-GST era and post GST era, had clubbed the Service Tax element in the post GST era on which the Respondent was eligible for input tax credit in pre-GST era too. Thus, profiteering should have only been calculated on the material component of his inputs.

d) The Respondent has reiterated his previous submissions that the CGST law did not prescribe any methodology or procedure for determining the amount of profiteering, neither the rules did prescribe any method or formula for the calculation of profiteering amount. The procedure and methodology adopted by this Authority and the DGAP for calculating profiteering was based on the premise that flats/builder-units were products in the real estate sector that were sold in the market on MRP, whereas in actual practice, the situation was completely different wherein prices of two identical units/flats in same building varied on account of various factors such as floor, side (front or back), view, number of flats on floors, additional amenities, additional fittings / work etc. Similarly, the prices of different units also varied based on other factors such as

completion of building, location of building in premises etc. which have been ignored by the DGAP while computing the profiteering amount in the instant case.

e) The Respondent has further submitted that he denied to have profiteered by any amount in terms of Section 171 of the CGST Act and Rules made there under and / or any other legal provisions as applicable and has added that the CGST Act did not provide any machinery for assessment of tax in terms of Section 171 of the above Act. He has also contended that the law being vague, it would not be open to the Assessing Authority to arbitrarily assess the tax amount. He has further added that where the statute did not provide procedural machinery for assessment or levy of tax, or where it was confiscatory, the same ought to be treated as unconstitutional. He has cited the case of **Commissioner *Central Excise and Customs Kerala v. Larsen and Toubro Limited* (2016) 1 SCC 170** in his defence. The Respondent has stated that the Hon'ble Apex court in the above cited case, held that in absence of prescribed machinery and prescribed procedure, acquires the character of a purely administrative affair and thus was a contravention of Article 19 (1) (g) of the Constitution of India. On the basis of the above cited decision of the Hon'ble Apex court, the Respondent has further contended that on the same analogy, determination of quantum of profiteering and thereby imposing a liability on the Respondent should be based on a prescribed machinery and a prescribed procedure, in the

absence of which, Section 171 of the CGST Act was constitutionally invalid.

22. We have carefully considered all the submissions filed by the Applicants, the Respondent and the other material placed on record and find that the Applicant No. 1, vide his complaint dated 04.09.2018, had alleged that the Respondent was not passing on the benefit of ITC to him in spite of the fact that he was availing ITC on the purchase of the inputs at the higher rates of GST which had resulted in benefit of additional ITC to him and was also charging GST from him @12%. This complaint was examined by the Standing Committee on Anti-Profiteering in its meetings held on 13.12.2018 and was forwarded to the DGAP for investigation who vide his Report dated 28.06.2019 has found that the ITC as a percentage of the total turnover which was available to the Respondent during the pre-GST period was 2.76% and during the post-GST period this ratio was 7.28% as per the Table-B mentioned above and therefore, the Respondent has benefited from the additional ITC to the tune of 4.52% (7.28% - 2.76%) of the total turnover which he was required to pass on to the flat buyers of this project. The DGAP has also found that the Respondent has not reduced the basic prices of his flats by 4.52% due to additional benefit of ITC and by charging GST at the increased rate of 12% on the pre-GST basic price, he has contravened the provisions of Section 171 of the CGST Act, 2017. The DGAP has further submitted that the amount of benefit of ITC which has not been passed on by the Respondent or the profiteered amount was Rs. 51,12,928/- which included 12% GST

on the basic profiteered amount of Rs. 45,65,114/-. The DGAP has also intimated that this amount of profiteering also included the profiteered amount of Rs. 1,33, 503/- including 12% GST in respect of the Applicant No. 1. He has also supplied the details of all the buyers who have purchased flats from the Respondent along with their unit numbers and the profiteered amount vide Annexure-14 attached with his Report dated 28.06.2019.

23. Further, we observe that the Respondent has contended that the profiteering should have been computed on incremental/extra amount of ITC only. Perusal of DGAP Report suggests that he has already addressed this objection of the Respondent in Table-B of his Report as the profiteering has been computed by reducing the pre-GST ITC to turnover ratio, i.e. 2.76%, from post GST ITC to turnover ratio, i.e. 7.26%. Therefore, amount of ITC which was available to the Respondent before introduction of GST, i.e. 2.76% of turnover, has been duly considered in Table:'B' above. Therefore, the profiteering has been calculated only on the additional ITC benefit which he has got during post-GST period and hence, the contention of the Respondent has already been addressed during investigation by the DGAP.

24. The Respondent has also contended that this Authority has not provided any basis, method and reasoning for computing profiteering in respect of violation of the provisions of Section 171 of the CGST Act, 2016 under Rule 126 of the above Rules. In this connection it is mentioned that this Authority has already determined the Methodology and Procedure under Rule 126 vide its Notification dated 28.03.2018

which is available on its website. However, the basis and the reasons for computing profiteering have been mentioned in Section 171 (1) of the above Act itself which require that "any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices." Therefore, it is quite clear that both the above benefits are required to be passed on by commensurate reduction in the price on every product to each buyer and in case they are not passed on profiteered amount has to be computed as per the provisions of Section 171 (3A) of the above Act. In view of the above facts no methodology is required to be prescribed by this Authority as the same has been clearly and unambiguously prescribed in the above Section. Therefore, this contention of the Respondent is not correct.

25. The Respondent has also raised objection on the methodology followed by the DGAP while calculating the profiteered amount however, the same is not maintainable as profiteering in each case has to be determined on the basis of the facts of each case and no straight jacket formula can be fixed for calculating the same as the facts of each case differ. Even the methodology applied in two cases of construction service may vary on account of the period taken for execution of the project, the area sold and the turnover realised. The Respondent has himself admitted that each case of the Real Estate Sector is unique and a single mathematical formula cannot be applied on every case hence, he should have no objection on the computation of the profiteered amount. Therefore, the objection raised by the Respondent on this ground is frivolous and without legal force.

26. The Respondent has claimed that he has passed on the GST benefit of 5% to his customers as he was not able to compute the exact benefit. However, this claim of the Respondent is incorrect as he has given different discounts to different buyers. The Respondent has not submitted any methodology how he had computed the amount of discount offered to the home buyers. The Respondent has also not produced any evidence to prove that the above discount was computed by him on the basis of the ITC availed by him. Further, it is observed from the Annexure-13 of the DGAP Report that the discount offered by the Respondent to his home-buyers varies from 4% to 17% which shows that this discount has no correlation with ITC benefit to be passed on. Therefore, there is no ground to believe that the above discount was given on account of the ITC benefit and there is no doubt that this discount was given only due to commercial reasons and hence the contention made by the Respondent in this regard cannot be accepted.

27. The Respondent has contended that he had reduced the prices of flats after introduction of GST. In this regard it is observed from the Annexure-13 of the DGAP Report that the Respondent has reduced the prices in March, 2017, much before the implementation of GST and further prices reduced by the Respondent vary from 4% to 17% and it is nowhere mentioned that these prices have been reduced in respect of ITC benefit which has accrued to the Respondent due to implementation of the GST. Therefore, there is no ground to believe that the above price reduction was done on account of the ITC benefit and there is no doubt that this reduction was done only due to

commercial reasons and hence the contention made by the Respondent in this regard cannot be accepted.

28. The Respondent has contended that the DGAP had wrongly compared data of 15 months of pre-GST period with data of 18 months of post GST period for the determination of profiteering. Perusal of DGAP's Report shows that the periods considered for calculation of ratio of Input Tax Credit to turnover are the period before introduction of GST, i.e. April, 2016 to June, 2017 and the period after introduction of the GST, i.e. July, 2017 to December, 2018 to ascertain the benefit of additional Input Tax Credit available with the Respondent and both the periods are almost similar. Further, comparison of equal period of pre-GST era to equal period of post-GST has no logic in the calculation of profiteering as it has nothing to do with the quantum of ITC in the pre-GST period rather it is based upon additional amount of ITC which is available to the Respondent in the post-GST period. The benefit of additional ITC would be ultimately calculated for the entire project after completion of the project and the Respondent would be required to pass on the benefit accordingly. Accordingly, no prejudice would be caused to him by the period of consideration. Therefore, the contention of the Respondent is not tenable and cannot be accepted..

29. The Respondent has raised the objection that the formula of the difference of the ratio of Input Tax Credit/Taxable Turnover in post GST & pre-GST regime did not seem to be appropriate. In this regard, Section 171(1) of the CGST Act, 2017 says, "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." Hence, the Anti-profiteering provisions suggest a mechanism to pass on the benefit to the recipients which the Government has decided to pass on to the consumers by way of reduction in tax rate of the goods/Services or increased benefit of Input Tax Credit. Thus, the additional benefit that accrues to the supplier in terms of Section 171 of CGST Act, 2017 has to be passed on to the recipients of services. Further, the formula used by the DGAP to compute the amount of profiteering has also factored the impact of ITC that was available with the Respondent before implementation of GST. Therefore, the formula used for computation of profiteering is best suitable in this case and appropriate. Hence, the contention of the Respondent is without any basis and frivolous.

30. The Respondent has also contended that the ITC in respect of unsold units was uncertain and it may have to be reversed at the time of completion of the project. Perusal of Row No. 6, 7 and 8 of Table-B of the DGAP Report suggests that the DGAP has already divided the whole ITC into proportionate ITC relevant to sold and unsold units and profiteering has been computed by considering the proportionate ITC relevant to sold flats/units only. Therefore, the contention of the Respondent has already been addressed appropriately at the time of investigation by the DGAP.

31. The Respondent has also contended that at the time of completion of project, there may be the situation in which he would remain with excess ITC credit. In this regard it is clear from the DGAP Report that the profiteering has been calculated from July, 2017 to December, 2018 only and the ITC relevant to this period has been considered by

the DGAP. It is clearly mentioned in the Para-22 of the DGAP Report that the profiteering after December, 2018 had not been examined as the exact quantum of ITC was not available at that time, since at that time the construction of the project was not complete. Therefore, the issue of excess ITC benefit at the time of completion of the project becomes irrelevant for the current proceedings since profiteering has been calculated only in respect of sold units on which GST is being charged by the Respondent from the customers and the effect of any future reversal of ITC must be treated as "NIL" before receiving of the Occupancy Certificate. In any case, the computation of profiteering by the DGAP has excluded the area unsold and the amount of profiteering has been worked out only in respect of area/ units that stood sold at the end of the investigation period. Hence, the contention of the Respondent is not tenable and cannot accepted.

32. The Respondent has also contended that the market has always been changing for the Real Estate sector and it was not possible to exactly depict the future scenario. In this regard the Respondent has contradicted himself, as on the one hand he is claiming that he has reduced the prices of flats in March, 2017 by pre-analysing the impact of implementation of GST and on the other hand he is contending that the Real Estate Sector is market driven and that the market is changing continuously. Further, the DGAP has calculated the profiteering amount only for the past period and has used factual data from the Returns and records provided by the Respondent himself. It is pertinent that there is no credible evidence to establish that the reduction in price of units had any correlation the benefit of ITC. The

claim of the respondent is that he reduced the price of units in March 2017, i.e. months before roll out of GST. In such a scenario, it is just not possible that the reduction, if any, was a result of change in the tax laws which resulted in the benefit of ITC to the Respondent. Hence, this contention of the Respondent is not tenable.

33. The Respondent has further contended that it was settled that in the taxing statutes mechanism and machinery for computation of value should be provided. However, this contention of the Respondent is fallacious as no tax has been levied under Section 171 (1) of the above Act and hence no machinery is required to be provided. However, to enforce the Anti-profiteering measures, as provided under Section 171 (2) of the above Act, this Authority has been established to determine whether both the above benefits have been passed on or not to the consumers. Under Rule 123 Standing and Screening Committees on Anti-Profiteering have been constituted to examine the accuracy and adequacy of the evidence to prima facie establish whether the above benefits have not been passed. As per Rule 129 of the CGST Rules, 2017 office of DGAP has been created and empowered to investigate the complaints alleging non passing of the above benefits on the recommendation of the Standing Committee on Anti-Profiteering. Vide Rule 127 this Authority has been assigned the duty of determining whether these benefits have been passed on or not, to identify the registered person who has not passed on the above benefits, to provide relief to the affected consumers, get the profiteered amount returned or deposited and impose penalties. Under Rule 133 this Authority has been empowered to determine the above benefits,

grant them to the eligible recipients, get the profiteered amount deposited and impose penalties. Under Section 171 (3A) of the CGST Act, 2017 read with Rule 133 (3) (d) & (e)) of the above Rules, this Authority has been given power to impose penalty on the registered persons and cancel their registration who do not pass on the above benefits. Under Rule 136 this Authority can 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.

34. We also observe that the Respondent has also placed reliance on the case of **Commissioner *Central Excise and Customs Kerala v. Larsen and Toubro Limited* (2016) 1 SCC 170** while making the above contention. 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 has been mentioned in para supra.

35. The Respondent has also contended that the profiteering should have been computed only on the goods part and not on the services part as he had not got additional benefit of ITC on services portion. In this connection it would be pertinent to mention that the Respondent has got benefit of ITC on goods as well and it is only the additional benefit of ITC, from his own suppliers in the value chain, which he has availed post GST which he is required to pass on. It is established from the

returns filed by the Respondent that he had earned relevant additional ITC of Rs. 41,02,974/- during the pre GST period and Rs. 1,62,43,291/- during the post GST period @ 2.76% and 7.28% of the turnover respectively during the above periods which has resulted in additional benefit of 5.99% of the turnover to him which he is bound to pass on. Hence, there is no basis for exclusion of services portion from the ITC post GST for calculation of the above ratio.

36. The Respondent has also contended that the investigation authorities should restrict their investigation to the particular transaction i.e. subject matter of the complaint filed by the Applicant No. 1 only and not to entire company/project. In terms of Section 171 (2) of the CGST Act, 2017, it is provided that "The Central Government may, on recommendation of the council, by notification, constitute an Authority, or empower an existing Authority constituted under any law for the time being in force, to examine whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him", therefore this Authority has been constituted to examine whether input tax credits availed by a registered person have actually resulted in commensurate reduction in the price of the goods or services or both supplied by him. Intention of the law clearly suggests that the registered person has to pass on the commensurate benefit of ITC to his each and every recipient not only to the complainant. Therefore, the contention of the Respondent is contradictory to the intent of the law and hence, cannot be accepted.

37. The Respondent has also contended that he was not in agreement with the computation of the profiteered amount made by the DGAP as it included the GST which had been deposited by him in the Govt. account. The plea taken by the Respondent on this ground is fallacious as by forcing the flat buyers to pay more price by not releasing the benefit of additional ITC and by collecting tax @12% on this additional realisation he has denied the benefit of additional ITC to them by not reducing the prices of the flats commensurately. Had he not collected additional GST the buyers would have paid less price and by doing so he has denied them the benefit of additional ITC which amounts to violation of Section 171 of the above Act. Both the Central as well as the State Government had no intention of collecting the additional GST as they had forfeited their revenue in favour of the flat buyers to provide them accommodation at affordable prices and by compelling the buyers to pay the same the Respondent has not only defeated the intention of the above Governments but has also acted against the interests of the house buyers, hence the above contention of the Respondent is not justified and therefore, the GST collected by him on the additional realisation has rightly been included in the profiteered amount by the DGAP and there is no question of reducing an amount of Rs. 5,47,814/- from the profiteered amount which has been forcibly collected by him from the flat buyers.

38. The Respondent has claimed that the Applicant No. 1 had filed complaint against him just to blackmail him and such activities should not be encouraged. However, as has been discussed above the Applicant No. 1 is a home-buyer in Respondent's project and hence a

recipient of the service supplied by the Respondent. Therefore, he falls within the definition of interested party as per the explanation given under Rule 137 (c) b of the CGST Rules, 2017. Otherwise also "any other person" can file complaint for violation of the provisions of Section 171 of the above Act as per Rule 128 (1) of the above Rules and therefore, the Applicant No. 1 is fully entitled to file the present complaint. Accordingly, the above contention of the Respondent cannot be accepted.

39. It is established from the perusal of the above facts that the Respondent has benefited from the additional ITC to the extent of 4.52% of the turnover during the period from July, 2017 to December, 2018 and hence the provisions of Section 171 of the CGST Act, 2017 have been contravened by the Respondent as he has not passed on the above benefit to his customers and has profiteered an amount of Rs. 51,12,928/- inclusive of GST @ 12% on the base profiteered amount of Rs. 45,65,114/-. Further, the Respondent has realized an additional amount of Rs. 1,33,503/- from the Applicant No. 1 which includes both the profiteered amount @ 4.52% of the taxable amount (base price) and 12% GST on the said profiteered amount. He has further realized an additional amount of Rs. 49,79,425/- which includes both the profiteered amount @ 4.52% of the taxable amount (base price) and 12% GST on the said profiteered amount from the 99 other flat buyers other than the Applicant No. 1 as mentioned in Annexure-14 of the Report dated 28.06.2019. These buyers are identifiable as per the documents placed on record and therefore, the Respondent is directed to pass on this amount of Rs. 49,79,425/- and Rs. 1,33,503/-

to the other flat buyers and the Applicant No. 1 respectively along with the interest @ 18% per annum from the dates from which the above amount was collected by him from them till the payment is made, within a period of 3 months from the date of passing of this order as per the details mentioned in Annexure- 14 attached with the Report dated 28.06.2019.

40. In view of the above facts this Authority under Rule 133 (3) (a) of the CGST Rules, 2017 orders that the Respondent shall reduce the prices to be realized from the buyers of the flats commensurate with the benefit of ITC received by him as has been detailed above. Since the present investigation is only up to 31.12.2018 any benefit of ITC which accrues subsequently shall also be passed on to the buyers by the Respondent. As the Respondent has claimed that the OC has been received by him in June, 2019 therefore, the DGAP is directed to carry out further investigation as per the provisions of Rule 133 (4) of the above Rules and compute the final amount of benefit of ITC which is required to be passed on and submit his Report within a period of 3 months of this Order.

41. Since, the DGAP has carried out the present investigation till 31.12.2018 only, any further benefit of additional ITC which might accrue to the Respondent, shall also be passed on by him to the eligible buyers. The concerned Commissioner CGST/SGST shall ensure that the above benefit is passed on by the Respondent to his recipients as per the provisions of Section 171 of the CGST Act, 2017. In case if the above benefit is not passed on in future the Applicant No. 1 or any other buyer shall be at liberty to approach the Maharashtra

State Screening Committee to launch fresh proceedings against the Respondent as per the provisions of Section 171 of the CGST Act, 2017.

42. It is also evident from the above narration of facts that the Respondent has denied benefit of ITC to the buyers of the flats and the shops being constructed by him in his Project 'Pyramid City 5' in contravention of the provisions of Section 171 (1) of the CGST Act, 2017 and has committed an offence under Section 171 (3A) of the above Act and therefore, he is 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 01.05.2019 vide which it was proposed to impose penalty under Section 29 and 122-127 of the above Act read with Rule 21 and 133 of the CGST Rules, 2017 is withdrawn to that extent.

43. The Authority as per Rule 136 of the CGST Rules 2017 directs the Commissioners 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 the Authority is passed on to all the eligible buyers. A Report in compliance of this order shall be submitted to this Authority by the Commissioners CGST/SGST Maharashtra through the DGAP within a period of 4 months from the date of receipt of this order.

44. 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 & Country 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

7.1.2020

(A. K. Goel)
Secretary. NAA

F. No. 22011/NAA/61/Pyramid/2019/149-155 Date: 07.01.2020

Copy To:-

1. M/s Pyramid Arcade Pvt. Ltd., Ganesh Snehal Apartment, Shopr NO. 101, Shraddhanand peth, opp. Prasad hospital, South Ambazari Road, Nagpur 440022.
2. Mrs. Shubhra Vipin Gajbhiye, R/o Flat No. 202, Megha Apartment, Narendra Nagar, Somalwada, Nagpur-440014.
3. Director General Anti-Profiteering, Central Board of Indirect Taxes & Customs, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.
4. Chief Commissioner, CGST, Mumbai Zone, GST Building, 115 M.K. Road, OPP, Churchgate Station, Mumbai- 400020.
5. Commissioner, Commercial Taxes, Office of the Commissioner of State Taxes, 8th floor, Goods and Services Tax (GST) Bhavan, Mazgaon, Mumbai - 400010.
6. Principal Secretary, Urban Development Department, 4th Floor, Main Building, Mantralay, Hutatma Rajguru Chowk, Mumbai.
7. Guard File/NAA Website.

7.1