

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

I. O. No. 3/2020  
Date of Institution 05.07.2019  
Date of Order 02.01.2020

**In the matter of:**

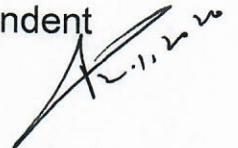
1. Sh. Ajay Kumar, House No. 18, Shreeram Colony, Near Jain Mandir, Sector-4, Gurgaon-122001.
2. Sh. Sahil Gupta on behalf of his mother Smt. Sushma Gupta, e-mail id sahhils@gmail.com
3. Director General of Anti-Profiteering, Central Board of Indirect Taxes & Customs, 2<sup>nd</sup> Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.

Applicants

Versus

M/s Pivotal Infrastructure Pvt Ltd., 704-705, 7th Floor, JMD Pacific Square, Sector-15, Part-II, Gurgaon, Haryana-122001.

Respondent



Quorum:-

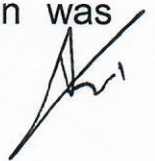
1. Sh. B. N. Sharma, Chairman
2. Sh. J. C. Chauhan, Technical Member
3. Sh. Amand Shah, Technical Member

Present:-

1. None for the Applicants..
2. Sh. Suresh Kumar, Company Representative and Sh. Narottam Rawat, CA, for the Respondent.

**ORDER**

1. The present Report dated 19.06.2019 has been received from the Applicant No. 3 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 their applications dated 09.10.2018 and 16.12.2019 filed before the Standing Committee on Anti-profiteering under Rule 128 (1) of the CGST Rules, 2017, the Applicant No. 1 and 2 had alleged profiteering by the Respondent in respect of purchase of Flats in his "Paradise" project located in Sector-62, Gurgaon. The above Applicants 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 first application was





considered by the Standing Committee on Anti-profiteering, in its meeting held on 13<sup>th</sup> 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. The second application was considered by the Standing Committee on Anti-profiteering, in its meeting held on 11<sup>th</sup> March, 2018, wherein it was also decided to forward the same to the DGAP to conduct detailed investigation.

2. On receipt of the recommendation from the Standing Committee on Anti-profiteering, the DGAP had issued Notice dated 15.01.2019 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 to the above Applicant by way of commensurate reduction in the price of the flat and in case it was so, to suo-moto compute the quantum of the same and mention it in his reply to the Notice along with the supporting documents. The Respondent was given opportunity to inspect the non-confidential evidence/information furnished by the Applicant No. 1 during the period between 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 10.06.2019, the above Applicants were also given opportunity to inspect the non-confidential documents/reply submitted by the Respondent on 13.06.2019 or 14.06.2019. However, the Applicants did not avail of the said opportunity.
3. The DGAP has covered the period from 01.07.2017 to 31.12.2018 during the current investigation. The time limit to complete the



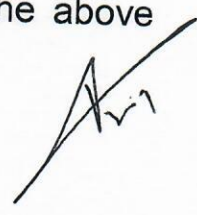
investigation was extended by this Authority, vide its order dated 19.03.2019 in terms of Rule 129 (6) of the above Rules.

4. The DGAP has further stated that the Respondent had submitted replies vide his letters/emails dated 29.01.2019, 08.02.2019, 20.02.2019, 05.03.2019, 21.05.2019, 06.06.2019, 11.06.2019 and 17.06.2019. The submissions of the Respondent were summed up by the DGAP as is mentioned in the subsequent Para.
5. The Respondent had stated before the DGAP that he had informed the Applicants over telephone and through e-mails regarding passing on the benefit of GST input tax credit. Further, a number of changes were taking place in the GST regime, such as, changes in the GST rate and applicability of GST on Affordable Housing Project. The Respondent had ensured that the benefit of actual input tax credit should be passed on to all his home buyers. The Respondent, vide e-mail dated 07.06.2019, had submitted sample copies of letters issued to the individual home buyers, informing them about the benefit of input tax credit as per his calculation and credit of the same to them. The Respondent had submitted that he had passed on the benefit of Rs. 81,82,783/- to the home buyers.
6. The Respondent had also submitted the following documents/information to the DGAP vide his above mentioned letters/e-mails during the course of the investigation:-
  - (a) Copies of GSTR-1 Returns for the period July, 2017 to December, 2018.



- (b) Copies of GSTR-3B Returns for the period July, 2017 to December, 2018.
- (c) Copies of VAT Returns (including all annexures) & ST-3 Returns for the period April, 2016 to June, 2017.
- (d) Copies of all demand letters issued and sale agreement made with the Applicant.
- (e) Copies of Balance Sheet for FY 2016-17 & 2017-18.
- (f) Copy of Electronic Credit Ledger for the period 01.07.2017 to 31.12.2018.
- (g) CENVAT/Input Tax Credit register for the FY 2016-17 and 2017-18 and April, 2018 to December, 2018.
- (h) Details of VAT, Service Tax, ITC of VAT, CENVAT Credit for the period April, 2016 to June, 2017, for the project "Paradise".
- (i) List of home buyers in the project "Paradise" alongwith details of benefit passed on.
- (j) Copy of RERA Registration Certificate of the Project "Paradise".
- (k) Copy of Tran-1.

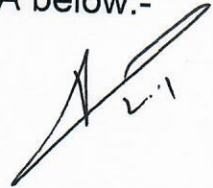
7. The DGAP has also stated that all the documents placed on record were carefully examined by him and he had found that the main issues for determination were whether there was reduction in the rate of tax or benefit of ITC on the supply of construction service by the Respondent after implementation of the GST w.e.f. 01.07.2017 and in case it was so, whether the Respondent had passed on the above





benefits to the home buyers as per the provisions of Section 171 of the CGST Act, 2017 or not.

8. The DGAP has further stated that the Respondent, vide his letter dated 29.01.2019 had submitted that he had informed the above Applicants from time to time through telephonic discussion about the benefit of GST input tax credit and assured the Applicant that he would pass on such benefit to all his home buyers as early as possible. Further, vide letter dated 08.02.2019, the Respondent had informed that he was in the process of computation of additional profit under the GST regime and that he would pass on the GST benefit to all his recipients. The Respondent, vide e-mail dated 07.06.2019 had submitted sample copies of letters issued to the individual flat buyers, informing them about the benefit of input tax credit as per his calculations and credit of the same to his home buyers' accounts.
9. The Respondent had submitted a copy of RERA Registration Certificate of his Project "Paradise" and the payment schedule for the purchase of flats at the basic sale price of Rs. 4,000/- per square feet for carpet area and Rs. 500/- per square feet for Balcony area. The Respondent, vide letter dated 08.02.2019 and subsequent e-mails, had submitted copies of demand letters issued to the Applicant No.1. The details of amounts and taxes paid by the Applicant to the Respondent were furnished by the DGAP as given in Table-A below:-





**Table-'A'**

(Amount in Rs.)

S. No.	Payment Stage	Demand Date	% of BSP	Instalment (Rs.)	VAT (Rs.)	GST (Rs.)	GST Benefit (Rs.)	Total Amount payable(Rs.)
1	At the time of booking	16.12.2016 & 03.01.2017	5.00%	1,15,475	--	--		5,77,375
2	Within 15 days of the date of Allotment letter		20.00%	4,61,900				
3	Within 06 months of the date of Allotment letter	01.08.2017	12.50%	2,88,688		34,643		3,23,331
4	Within 12 months of the date of Allotment letter	31.01.2018	12.50%	2,88,688		23,095		3,11,783
5	Within 18 months of the date of Allotment letter	03.08.2018 & 22.10.2018	12.50%	2,88,688		23,095		3,11,783
6	Within 24 months of the date of Allotment letter	31.01.2019, 31.03.2019 & 10.04.2019	12.50%	2,88,688	28,869	23,095	13,609	3,27,043
7	Within 30 months of the date of Allotment letter	Yet to be demanded	12.50%	2,88,688		23,095		3,11,783
8	Within 36 months of the date of Allotment letter		12.50%	2,88,688		23,095		3,11,783
			100.00 %	2,309,503	28,869	1,50,118	13,609	24,74,881

10. The DGAP has further stated that para 5 of Schedule-III of the Central Goods and Services Tax Act, 2017, defining activities or transactions which shall be treated neither as a supply of goods nor a supply of services, reads as "Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building". Further, Clause (b) of para 5 of Schedule II of the Central Goods and Services Tax Act, 2017 reads as



“(b) construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier”. In the light of these provisions, the DGAP has contended that the ITC pertaining to the units which were under construction but not sold was provisional ITC that may be required to be reversed by the Respondent, if such units would remain unsold at the time of issue of CC, in terms of Section 17 (2) & Section 17 (3) of the Central Goods and Services Tax Act, 2017 which read as under:-

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

17 (3) The value of exempt supply under sub-section (2) shall be such as may be prescribed, and shall include supplies on which the recipient is liable to pay tax on reverse charge basis,



transactions in securities, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.

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

11. The DGAP has also observed that prior to 01.07.2017, i.e., before the GST was introduced, as the service of construction of affordable housing provided by the Respondent, was exempt from Service Tax vide Notification No. 25/2012-ST dated 20.06.2012 (as amended by Notification No. 9/2016-ST dated 01.03.2016) and thus the Respondent was not eligible to avail CENVAT credit of Central Excise duty paid on the inputs or Service Tax paid on the input services, as per the CENVAT Credit Rules, 2004, which were in force at the material time. However, the Respondent was eligible to avail credit of Service Tax paid on the input services (CENVAT credit of Central Excise duty was not available) in respect of the commercial shops sold by him. The Respondent was also eligible to avail input tax credit of VAT paid on the inputs. Further, post-GST, the Respondent could avail input tax credit of GST paid on all the inputs and input services. From the data submitted by the Respondent covering the period April, 2016 to December, 2018 the details of the input tax credit availed by him, his turnover from the project "Paradise" and the ratio of input tax credit



to turnover, during the pre-GST (April, 2016 to June, 2017) and post-GST (July, 2017 to December, 2018) periods was furnished by the DGAP as per the Table-B given below:-

**Table-'B'**

(Amount in Rs.)

Sr. No.	Particulars	Total (Pre-GST) April, 2016 to June, 2017	12% GST (01.07.2017 to 31.12.2018) (Flats+Shops)	8% GST (25.01.2018 to 31.12.2018) (Flats)	Total (Post-GST)(01.07.2017 to 31.12.2018)
1	CENVAT of Service Tax Paid on Input Services used for Commercial Shops (A)	15,15,855	-	-	-
2	Input Tax Credit of VAT Paid on Purchase of Inputs (B)	3,59,100	-	-	-
3	Total CENVAT/VAT Credit Available (C)= (A+B)	18,74,955	-	-	-
4	Input Tax Credit of GST Aailed (D)	-	-	-	-
5	Turnover from residential flats as per Home Buyers List (E)	36,42,65,250	49,99,880	1,67,13,313	2,17,13,193
6	Turnover from commercial shops as per Buyers List (F)	1,24,82,710	-	-	-
7	Total Turnover (G)= (E)+(F)	37,67,47,960	25,39,89,178	41,58,39,125	66,98,28,303
8	Total Saleable Area (Excluding Balcony Area) (in SQF) (H)	4,15,905	3,91,100 (Residential) + 24,805 (Commercial)		4,15,905
9	Total Sold Area (Excluding Balcony Area) (in SQF) relevant to turnover (I)	3,60,548	3,91,100 (Residential) + 6624.89 (Commercial)		3,97,724.89
10	ITC Relevant to Turnover[(J)= (C)*(I)/(H)] or [(J)= (D)*(I)/(H)]	16,25,398			2,07,64,062
Ratio of Input Tax Credit to turnover [(K)=(J)/(G)*100]		0.43%			3.10%

12. The DGAP has also submitted from the above Table-'B' that the ITC as a percentage of the total turnover that was available to the Respondent during the pre-GST period (April, 2016 to June, 2017) was 0.43% and during the post-GST period (July, 2017 to December, 2018), it was 3.10% which clearly confirmed that post-GST, the Respondent has been benefited from additional ITC to the tune of 2.67% [3.10% (-) 0.43%] of the turnover.

13. The DGAP has further submitted that the Central Government, on the recommendation of the GST Council, had levied 18% GST (effective



rate was 12% in view of 1/3rd abatement for land value) on construction service, vide Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017. The effective GST rate on construction service in respect of affordable and low-cost houses upto a carpet area of 60 square metres per house was further reduced from 12% to 8%, vide Notification No. 1/2018-Central Tax (Rate) dated 25.01.2018. In view of the change in the GST rate after 01.07.2017, the issue of profiteering has been examined by the DGAP in two parts, i.e., by comparing the applicable tax rate and input tax credit available in the pre-GST period (April, 2016 to June, 2017) when only VAT@ 4.50% was payable with (1) the post-GST period from 01.07.2017 to 24.01.2018, when the effective GST rate was 12% for both residential flats and commercial shops and (2) with the GST period from 25.01.2018 to 31.12.2018, when the effective GST rate was 12% for commercial shops and 8% for residential flats. Accordingly, on the basis the figures contained in table- 'B' above, the comparative figures of the ratio of input tax credit availed/available to the turnover in the pre-GST and post-GST periods as well as the turnover, the recalibrated base price and the excess realization (profiteering) during the post-GST period, were tabulated as has been given in Table-C below:-

**Table-'C'**

(Amount in Rs.)

S. No.	Particulars		Post- GST Period			
			01.07.2017 to 31.12.2018 (Shops)	01.07.2017 to 24.01.2018 (Flats)	25.01.2018 to 31.12.2018 (Flats)	Total
1	Period	A				
2	Output GST rate (%)	B	12	12	8	
3	Ratio of Input Tax Credit to Turnover post-GST as per table (%)	C	3.1	3.1	3.1	3.1



4	Increase in input tax credit availed post-GST (%)	D= 3.10% less 0.43%	2.67	2.67	2.67	2.67
5	<b>Analysis of Increase in input tax credit:</b>					
6	Base Price raised during July, 2017 to December, 2018 (Rs.)	E	38,118,553	215,870,625	415,839,125	669,828,303
7	GST raised over Basic Price (Rs.)	F= E*B	4,574,226	25,904,475	33,267,130	63,745,831
8	Total Demand raised	G=E+F	42,692,779	241,775,100	449,106,255	733,574,134
9	Recalibrated Basic Price	H= E*(1-D) or 97.33% of E	37,100,788	210,106,879	404,736,220	651,943,887
10	GST on recalibrated basic price @as applicable	I = H* B	4,452,095	25,212,826	32,378,898	62,043,818
11	Commensurate demand price	J = H+I	41,552,882	235,319,705	437,115,118	713,987,705
12	<b>Excess Collection of Demand or Profiteered Amount</b>	<b>K= G-J</b>	<b>1,139,897</b>	<b>6,455,395</b>	<b>11,991,137</b>	<b>19,586,429</b>

14. The DGAP has also observed from Table-'C' that the additional ITC of 2.67% 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 to the recipients.

15. On the basis of the aforesaid CENVAT/ITC availability pre and post-GST and the details of the amount collected by the Respondent from the Applicant and other home buyers during the period from 01.07.2017 to 24.01.2018, the amount of benefit of ITC not passed on or in other words, the profiteered amount has been quantified by the DGAP as Rs. 64,55,395/- which included GST @ 12%, on the base profited amount of Rs. 57,63,746/-. Further, the amount of benefit of input tax credit that needed to be passed on by the Respondent to the home buyers during the period 25.01.2018 to 31.12.2018 has been computed as Rs. 1,19,91,137/- which included 8% GST on the base amount of Rs. 11,102,905/-. In respect of the commercial shops sold by the Respondent during the period 01.07.2017 to 31.12.2018, the



benefit of input tax credit that needed to be passed on by the Respondent to the buyers of commercial shops came to Rs. 11,39,897/- which included 12% GST on the base amount of Rs. 10,17,765/-. Therefore, the total benefit of input tax credit that the Respondent was required to pass on during the period 01.07.2017 to 31.12.2018 in respect of both residential flats as well as commercial shops, came to Rs. 1,95,86,429/- which included GST (@ as applicable) on the base amount of Rs. 1,78,44,416/-. The home and commercial shop buyer and unit no. wise break-up of this amount was given in Annexure-17 of the DGAP Report. This amount was inclusive of profiteered amount in respect of both the Applicant No. 1 and 2. It was also observed that the Respondent had supplied the construction services in the State of Haryana only.

16. The DGAP has further stated that the Respondent had submitted that he had passed on the benefit of Rs. 81,82,783/- to the home buyers. A summary of category-wise input tax credit benefit required to be passed on and the benefit claimed to have been passed on by the Respondent, was furnished by the DGAP as is given in Table- D below:-

**Table-D**

(Amount in Rs)

Sr. No.	Category of Home buyers	No. of Units	Area (in Sqf)	Amount Received Post GST	Benefit required to be passed on as per Annex-17	Benefit claimed to have been Passed on	Difference	Remark
A	B	C	D	E	F	G	H=F-G	I
1	Applicant (Residential)	1	566	8,66,063	25,282	13,609	11,673	Further Benefit to be passed on as per Annex-18
2	Other Buyers (Residential)	739	3,90,534	63,08,43,688	1,84,21,250	80,34,068	1,03,87,182	Further Benefit to be passed on as per Annex-18
	<b>Total Residential (A)</b>	<b>740</b>	<b>3,91,100</b>	<b>63,17,09,751</b>	<b>1,84,46,532</b>	<b>80,47,677</b>		
3	Commercial Shop Buyers	23	6,625	3,81,18,553	11,39,897	1,15,119	10,24,778	Further Benefit to be passed on as per Annex-19
4	Commercial Shop	1	345	0	0	19,987	-19,987	No Consideration Paid



	Buyers							Post-GST, However, Respondent passed on benefit. Details as per Annex-20
5	Commercial Shop Buyers	3	1,036	0	0	0	0	No Consideration Paid Post-GST and no benefit passed on.
6	Unsold Shop	60	16,798				0	Unsold Units
	<b>Total Commercial (B)</b>	<b>87</b>	<b>24,805</b>	<b>3,81,18,553</b>	<b>11,39,897</b>	<b>1,35,106</b>		
	<b>Grand Total (C)=(A)+(B)</b>	<b>827</b>	<b>4,15,905</b>	<b>66,98,28,304</b>	<b>1,95,86,429</b>	<b>81,82,783</b>		

17. The DGAP has observed from the above Table - D that the benefit claimed to have been passed on by the Respondent was less than what he ought to have passed on in case of 740 residential flats including that of the Applicants (Sr. 1 & 2 of above table), by an amount of Rs. 1,03,98,855/- and in case of 23 commercial shops (Sr. 3 of above table), by an amount of Rs. 10,24,778/-. The details of these amounts were given in Annexure-18 & 19 of the DGAP's Report. Further, the benefit claimed to have been passed on by the Respondent was higher than what he should have passed on, in respect of one of the already sold commercial shops (Sr. 4 of above Table), by an amount of Rs. 19,987/-. The details of this excess benefit claimed to have been passed on were given in Annexure-20 of the DGAP's Report. However, this excess benefit claimed to have been passed on to some recipients, could not be set off against the additional benefit required to be passed on to some other recipients as per Annexure-18 & 19 of the DGAP's Report and it could only be adjusted against any future benefit that might accrue to such recipients who had received excess benefit.

18. The DGAP has further mentioned that the above computation of profiteering was with respect to 740 home buyers and 23 commercial



shop buyers, whereas the Respondent had booked 740 residential units and 27 commercial shops till 31.12.2018. Out of the 27 commercial shops booked till 31.12.2018, in respect of 4 shops, though the booking amount was received in the pre-GST period, no consideration had been received during the post-GST period of 01.07.2017 to 31.12.2018 (period covered by the investigation). Therefore, if the input tax credit in respect of these 4 commercial shops was considered to calculate the profiteering in respect of 763 units (740 residential flats + 23 commercial shops) where payments had been received after GST, the input tax credit as a percentage of turnover would be distorted and erroneous. Therefore, the benefit of input tax credit in respect of these 4 commercial shops should be calculated when the consideration would be received in the post-GST period by taking into account the proportionate input tax credit in respect of these 4 commercial shops.

19. The DGAP has also claimed that the benefit of additional ITC of 2.67% of the turnover has, in fact, accrued to the Respondent and the same was required to be passed on to the above Applicants and other recipients. Thus, the Respondent has contravened the provisions of Section 171 of the Central Goods and Services Tax Act, 2017 inasmuch as the additional benefit of ITC @ 2.67% of the turnover (base price) received by the Respondent during the period from 01.07.2017 to 31.12.2018, had not been passed on by the Respondent to the above Applicants and 761 other recipients. On this account, the Respondent has realized an additional amount to the tune of Rs.





11,673/- from the Applicant No. 1 which included both the profiteered amount @ 2.67% of the turnover (base price) and 12% GST on the said profiteered amount. Further, the investigation has revealed that the Respondent has also realized an additional amount of Rs. 1,14,11,960/- which included both the profiteered amount @ 2.67% of the turnover (base price) and GST on the said profiteered amount, from the Applicant No. 2 as well as 761 other recipients who were not Applicants in the present proceedings. These recipients were identifiable as per the documents provided by the Respondent giving the names and addresses along with Unit No. allotted to such recipients. Therefore, this additional amount of Rs. 1,14,11,960/- was required to be returned to such eligible recipients.

20. The DGAP has also stated that the present investigation has covered the period from 01.07.2017 to 31.12.2018. Profiteering, if any, for the period post December, 2018, has not been examined by him, as the exact quantum of ITC that would be available to the Respondent in future could not be determined at the stage, when the construction of the project was yet to be completed. He has further stated that the provisions of Section 171 (1) of the Central Goods and Services Tax Act, 2017 requiring that "a reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices", have been contravened by the Respondent in the present case.
21. The above Report was considered by the Authority in its meeting held on 09.07.2019 and it was decided that the Applicants and the



Respondent be asked to appear before the Authority on 05.08.2019. 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 Applicants and the Respondent was represented by Sh. Suresh Kumar, Company Representative and Sh. Narottam Rawat, CA.

22. Vide order dated 05.08.2019, The Authority directed the Respondent to submit the following documents:-

- a) Statement showing project-wise ITC/CENVAT Credit availed and Turnover as per the statutory Returns (GST, ST, VAT Returns) for the period from 01.04.2016 to 31.12.2018.
- b) Project-wise list of all payments received from each of his buyers.
- c) Balance Sheet for the years 2016-17, 2017-18 & 2018-19 along with the project wise Trial Balance for the same period.
- d) Ledger for the period from 01.04.2016 to 31.12.2018.
- e) Details of the total number of apartments/flats/commercial units/residential units in the project with total area of each flat.
- f) Tran-2 Returns.
- g) Details of Credit Reversal, if any.
- h) Agreement/Registry between the land owner and the builder for the subject project.



i) Present status of the project in terms of sold and unsold units and ITC benefit passed on to his consumers.

j) Details of payment of ITC benefit as claimed by the Respondent.

23. The Respondent has shown agreement with the DGAP Report during the hearing held on 20.09.2019 and in his written submissions dated 06.09.2019. The Respondent has submitted following documents vide his above submissions:-

a) Statement showing project-wise ITC/Cenvat credit availed and Turnover as per the Statutory Return (GST/ST/VAT Returns) for the period from 01.04.2016 to 31.12.2018.

b) Summary of Project wise Turnover and ITC/CENVAT Credit.

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

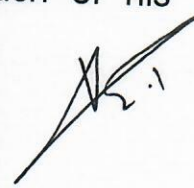
ii. Turnover Summary and CENVAT Summary for the Period April-2017 to June-2017.

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

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

v. Total VAT Credit summary and Detailed Chart of VAT Credit for the Sector-62 Project.

c) Project-wise list of all payments received from each of his buyers is enclosed.





- d) Balance Sheet for the year 2016-17, 2017-18 along with the Project-wise Trial Balance for the same period.
- e) Summary of the Total number of apartment/flats/ commercial units/ residential units in the Project with total area of each flats.
- f) Status of the project in term of sold and unsold units as on 30.06.2019.
- g) Registry between the land owner and builder for the Sector-62.
- h) Sample Credit Letters and Respective Ledger for the period from 01.04.2016 to 31.12.2018.

24. The Respondent vide his above submissions has also submitted the details of other projects which were on-going as on 1st July, 2017 as under:-

Sr. No.	Project Name	ITC Benefit claimed to have passed on till 30.08.2019 (Amount in Lacs)		
		Residential	Commercial	TOTAL
1	Sector-70	23.72	NIL	23.72
2	Sector-84	179.30	14.84	194.14
3	Sector-99	108.59	18.34	126.92

25. The Respondent has also submitted that the Report furnished by the DGAP dated 19.06.2019, was acceptable to him and ITC benefit determined as per the report would be passed on to all the home buyers.

26. The Respondent has further submitted that he had not availed any ITC on closing stock of raw material as on 30.06.2017, therefore, he was



not required to submit any TRAN-2 Return. He further stated that he had reversed the ITC in respect of non-taxable turnover.

27. The Respondent has further submitted that due to newly implemented law and frequent changes at initial stage he was unable to determine exact amount to be passed to the home buyers and to avoid the delay he had passed an interim amount to the home buyers in the month of March-2019 through Credit notes, further after receiving the report from the DGAP he had again passed another instalment of the ITC benefit to the home buyers to bring the amount at par of the amount as mentioned in the Report. A Summary was submitted by the Respondent as is given below:-

**ITC benefit Passed under Project "Paradise" Sector-62**

Period	Total ITC Availed	ITC passed in March-2019	ITC Passed in August-2019	TOTAL ITC Passed to Home buyers
July-17 to Mar-2018	1,03,59,470			-
Apr-18 to Dec-18	1,13,53,723			-
Jan to Mar-19	33,07,641			-
Credit Passed to Residential Unit Home buyers		80,47,677	1,12,38,974	1,92,86,651
Credit Passed to Commercial Unit Home buyers		1,35,106	24,66,051	26,01,157
<b>TOTAL</b>	<b>2,50,20,834</b>	<b>81,82,783</b>	<b>1,37,05,024</b>	<b>2,18,87,807</b>

28. Taking into account the above submissions of the Respondent, he was directed to submit the evidence showing that ITC benefit had actually been passed on by him to all the buyers. The Respondent vide his submissions dated 05.11.2019 has submitted the list of home buyers along with credit notes and undertakings from the buyers on sample



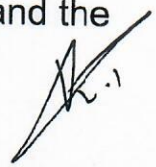
basis showing the amount of ITC benefit which the Respondent has claimed to have passed on. Further, he also submitted Ledgers in respect of all the home buyers vide his submissions dated 25.11.2019 to prove his claim.

29. We have carefully considered all the submissions filed by the Applicants, the Respondent and the other material placed on record. We find that the Applicant No. 1 and 2, vide their complaints dated 09.10.2018 and 16.12.2019 respectively, have alleged that the Respondent was not passing on the benefit of ITC to them 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 ITC to him and that the Respondent was also charging GST from them @12%. These complaints were examined by the Standing Committee in its meetings held on 13.12.2018 and 11.03.2019 respectively and forwarded to the DGAP for investigation. The DGAP, vide his Report dated 19.06.2019 has found that the ITC as a percentage of the total turnover which was available to the Respondent during the pre-GST period was 0.43% and during the post-GST period this ratio was 3.10% details of which are given in Table-B of the DGAP Report. Therefore the DGAP has reported that the Respondent has benefited from ITC to the tune of 2.67% (3.10% - 0.43%) of his total turnover during the post-GST period which he was required to pass on to the flat buyers of his project. The DGAP has also found that the Respondent had not reduced the basic prices of his flats by 2.67% on the account of benefit from ITC although he had been charging his home buyers, GST at the



increased rate of 12% on the pre-GST basic price. The DGAP has also reported that the Respondent has thus contravened the provisions of Section 171 of the CGST Act, 2017. The DGAP has also reported that the amount of benefit of ITC which has not been passed on by the Respondent, i.e. the aggregate profiteered amount, came to Rs. 1,95,86,429/- including the GST applicable on the basic profiteered amount of Rs. 1,78,84,716/-. The DGAP has also reported that the above aggregate amount of profiteering also included the profiteered amount of Rs. 25,282/- (inclusive of GST as applicable) for each of the Applicant No. 1 and 2.

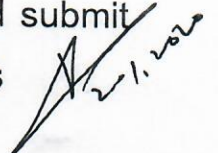
30. It is clear to us from the perusal of the above facts that the Respondent has indeed benefited on account of ITC to the extent of 2.67% of his turnover during the post-GST period, i.e. from July, 2017 to December, 2018 and hence the provisions of Section 171 of the CGST Act, 2017 have been contravened by the Respondent since he has not passed on the above benefit to his home buyers. Further he has profiteered to the extent of Rs. 1,95,86,429/-, inclusive of GST @ as applicable, on the base profiteered amount of Rs. 1,78,84,716/-. Further, it is clear to us that the Respondent has realized additional amounts of Rs. 25,282/- each from the Applicant No. 1 and 2, inclusive of GST. The Respondent has also realized an additional amount of Rs. 1,95,35,865/- (inclusive of GST as applicable) from all the home buyers other than the Applicant No. 1 and 2. The total amount of profiteering on part of the Respondent works out to be Rs. 1,95,86,429/- ( Rs. 1,95,35,865 + Rs. 25,282/- + Rs. 25,282/- ) and the





same is tabulated in Annexure- 17, 18 and 19 of the Report of the DGAP dated 19.06.2019.

31. Further, we observe that the Respondent, vide his submissions dated 06.09.2019, has contended that he has already passed on benefit of Rs. 2,18,87,807/- ( Rs. 81,82,783/- in March, 2019 and Rs. 1,37,05,024/- in August, 2019) to his home buyers during the period from 01.07.2017 to 31.08.2019. As evidence, he has submitted List of all his home buyers mentioning the amount of ITC benefit passed on to each of them, Customer-wise ledgers in respect of the home buyers which mention entry/entries indicating "GST benefit pass on to Home buyers" and has also submitted sample acknowledgement letters from his home buyers in support of his having passed on the benefit of ITC to them in terms of Section 171 of CGST Act. We also find that perusal of Table-D of the DGAP Report dated 19.06.2019 suggests an amount of Rs. 81,82,783/- has been claimed to have been passed on by the Respondent to his home buyers on account of ITC benefit. However, it is also clear from Table-D of the DGAP Report and claim of the Respondent of having passed on the benefit of Rs. 81,82,783/-, has not been verified at any stage by the DGAP. Further, the claim made by the Respondent during the hearings held before this Authority of having passed on another tranche of benefit of ITC to his home buyers, taking the total ITC benefit passed on to Rs. 2,18,87,807/-, also needs to be verified by the DGAP. Accordingly the DGAP is directed to further verify the total amount of ITC benefit claimed to have been passed on to his home buyers by the Respondent till date, as per the provisions of Rule 133 (4) of the above Rules and submit

 21.1.2020



his Report clearly mentioning the verified amount of benefit passed on by the Respondent to his home buyers and the balance amount still to be passed on to each of the home buyers within a period of two months of this Order.

32. We also observe that the Respondent, vide his submissions dated 16.04.2019, has himself admitted that he has three more projects under execution as on 1st July, 2017 details of which have been submitted by him as follows:-

Sr. No.	Project Name	ITC Benefit claimed to have passed on till 30.08.2019 (Amount in Lacs)		
		Residential	Commercial	TOTAL
1	Sector-70	23.72	NIL	23.72
2	Sector-84	179.30	14.84	194.14
3	Sector-99	108.59	18.34	126.92

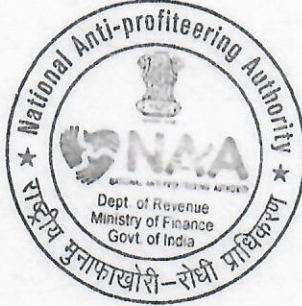
Keeping in view the self-admission of the Respondent in which he has stated that he is liable to pass on the benefit of additional ITC as per the provisions of Section 171 of the above Act, there is reasonable ground to believe that the Respondent is required to pass on the benefit of additional ITC to the eligible house buyers in respect of the above projects. Accordingly, the DGAP is also directed to investigate the issue of passing on the benefit of additional ITC in respect of the above three projects i.e. projects undertaken by the Respondent, in terms of Section 171 (2) of the CGST Act, 2018 read with Rule 133 (5) of the CGST Rules, 2017 and submit his Report.





33. A copy each of this order be supplied to both the Applicants, the Respondent for necessary action. File be consigned after completion.

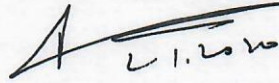
Sd/-  
(B. N. Sharma)  
Chairman



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

Sd/-  
(Amand Shah)  
Technical Member

Certified Copy



(A. K. Goel)  
Secretary, NAA

F. No. 22011/NAA/60/Pivotal/2019 /42

Date: 02.01.2020

Copy To:-

1. M/s Pivotal Infrastructure Pvt Ltd., 704-705, 7th Floor, JMD Pacific Square, Sector-15, Part-II, Gurgaon, Haryana-122001.
2. Shri Ajay Kumar, House No. 18, Shreeram Colony, Near Jain Mandir, Sector-4, Gurgaon-122001.
3. Director General Anti-Profiteering, Central Board of Indirect Taxes & Customs, 2<sup>nd</sup> Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001 along with submissions of the Respondent dated 29.04.2019 for your report before next hearing.
4. Guard File.

