

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

Case No.	70/2020
Date of Institution	02.03.2020
Date of Order	04.11.2020

In the matter of:

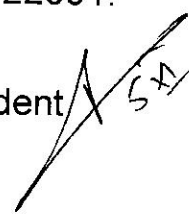
1. Sh. Ajay Kumar, House No. 18, Shreeram Colony, Near Jain Mandir, Sector-4, Gurgaon-122001.
2. Sh. Sahil Gupta on behalf of his mother Smt. Sushma Gupta, e-mail id sahhils@gmail.com
3. Director-General of Anti-Profiteering, Central Board of Indirect Taxes & Customs, 2nd Floor, Bhai Vir Singh Sahitya 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. Dr. 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 a 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 the 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 13th December 2018, wherein it was decided to forward the same to the DGAP to conduct a detailed investigation into the allegation made in 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 11th March 2018, wherein it was also decided to forward the same to the DGAP to conduct a detailed investigation.

2. On receipt of the recommendation from the Standing Committee on Anti-profiteering, the DGAP had issued a 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 Applicants by way of commensurate reduction in the price of the flats 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 allowed 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 allowed to inspect the non-confidential documents/reply submitted by the Respondent on 13.06.2019 or 14.06.2019. However, the above 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 has been mentioned in the subsequent Paras.
5. The Respondent had stated before the DGAP that he had telephonically and through e-mails informed the above Applicants regarding passing on the benefit of input tax credit. Further, at that time several changes were taking place in the GST law, such as changes in the GST rate and applicability of GST on Affordable Housing Projects. The Respondent had ensured that the benefit of actual input tax credit should be passed on to all his home buyers. The Respondent, vide his e-mail dated 07.06.2019, had submitted sample copies of letters issued to the individual home buyers, informing them about the benefit of the 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 homebuyers of the project "Paradise" along with 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 a 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 discussions 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 from the input tax credit as per his calculations and credit of the same to his homebuyers' accounts.
9. The Respondent had submitted a copy of the 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 the balcony area. The Respondent, vide letter dated 08.02.2019 and subsequent e-mails, had submitted copies of demand letters issued to Applicant No.1. The details of amounts and taxes paid by the Applicant to the Respondent were furnished by the DGAP as is given in Table-A below:-



Table-'A'

(Amount in Rs.)

S. No.	Payment Stage	Demand Date	% of BSP	Installment (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 the Allotment letter		20.00%	4,61,900				
3	Within 06 months of the date of the Allotment letter	01.08.2017	12.50%	2,88,688		34,643		3,23,331
4	Within 12 months of the date of the 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 the 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 the Allotment letter	Yet to be demanded	12.50%	2,88,688		23,095		3,11,783
8	Within 36 months of the date of the 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 the 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 of 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 of 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 before 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 the GST paid on all the inputs and input services. From the data submitted by the Respondent covering the period from

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 Availed (D)	-	49,99,880	1,67,13,313	2,17,13,193
5	Turnover from residential flats as per Home Buyers List (E)	36,42,65,250	-	-	-
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% given the 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 up to 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. Given 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, based on 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	The 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	Analysis of Increase in input tax credit:					
6	Base Price raised from 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	Excess Collection of Demand or Profiteered Amount	K= G- J	1,139,897	6,455,395	11,991,137	19,586,429

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. Based on the aforesaid CENVAT/ITC availability pre and post-GST and the details of the amount collected by the Respondent from the above Applicants 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 profiteered 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 profiteered amount of Rs. 1,78,44,416/-. The unit-wise break-up of this amount has been given in Annexure-17 of the DGAP Report. This amount was inclusive of the 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 Homebuyers	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
	Total Residential (A)	740	3,91,100	63,17,09,751	1,84,46,532	80,47,677		
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 Buyers	1	345	0	0	19,987	-19,987	No Consideration Paid 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
	Total Commercial (B)	87	24,805	3,81,18,553	11,39,897	1,35,106		
	Grand Total (C)=(A)+(B)	827	4,15,905	66,98,28,304	1,95,86,429	81,82,783		

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 the case of 740 residential flats including that of the Applicants (Sr. 1 & 2 of the above table), by an amount of Rs. 1,03,98,855/- and in the case of 23 commercial shops (Sr. 3 of the 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 the excess benefit.

18. The DGAP has further mentioned that the above computation of profiteering was in respect of 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 (the 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 the input tax credit in respect of these 4 commercial shops can only 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 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 since 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 the future could not be determined at this 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 a 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, Service Tax, 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 the total area of each flat.
- f) Tran-2 Returns.
- g) Details of Credit Reversal, if any.
- h) Agreement/Registry between the landowner and the builder for the subject project.
- i) Present status of the project in terms of sold and unsold units and the 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 the following documents vide his above submissions:-


- a) Statement showing project-wise ITC/Cenvat credit availed and Turnover as per the Statutory Return (GST/Service Tax/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) A 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 the total area of each flat.
- f) Status of the project in terms of the sold and the unsold units as of 30.06.2019.
- g) Registry between the landowner 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 the initial stage he was unable to determine the 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 installment 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 Homebuyers
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 Homebuyers		80,47,677	1,12,38,974	1,92,86,651
Credit Passed to Commercial Unit Homebuyers		1,35,106	24,66,051	26,01,157
TOTAL	2,50,20,834	81,82,783	1,37,05,024	2,18,87,807

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. Out of a total of 763 buyers where ITC benefit was required to be pass on, the Respondent vide his submissions dated 05.11.2019 and 25.11.2019 had submitted the list of home buyers along with credit notes, Ledgers, and undertakings/ acknowledgments in respect of 84 (Eighty Four) buyers, on a sample basis, showing the amount of ITC benefit which the Respondent had claimed to have passed on, as is mentioned in the below Table:-

Sr. No.	Name of Customer	Contact No.	Unit No.	Profiteering amount to be passed	Amount of ITC credit already Passed	Credit to be passed (Excess passed)
1	Saurabh Goyal	9810035634	T3-1103	28,287	31,442	-3,155
2	Sudesh Ahuja		T5-103	28,287	31,442	-3,155
3	Kuldeep	9466892318	T6-101	13,585	15,041	-1,456
4	Usha Gupta	9953540928	T5-503	28,287	31,442	-3,155
5	Ritu Malhotra	9313885992	T4-304	28,287	31,442	-3,155
6	Raghav Seth	8010343948	T4-704	28,287	31,442	-3,155
7	Mannath Jandotra	9891199701	T4-108	28,287	31,442	-3,155
8	Naresh Kumar	9919664001	T3-1008	28,287	31,442	-3,155

	Narang					
9	Chandeep Singh	9999965598	T5-407	28,287	31,442	-3,155
10	Sandeep Tripathi	9873649036	T1-1107	28,287	31,442	-3,155
11	Rahul Jha	9899787802	T6-907	13,585	15,041	-1,456
12	Girish Garg	9971285671	T5-808	28,287	31,442	-3,155
13	Sunita Punia	9811142130	T5-1307	28,287	31,442	-3,155
14	Deepak Bhatia	9871260018	T5-704	28,287	31,442	-3,155
15	Ambrish Pal	9811730333	T2-1004	28,287	31,442	-3,155
16	Sachin Jhunjunwala	8800668669	T5-703	28,287	31,442	-3,155
17	Manish Yadav	9811252268	T3-1104	28,287	31,442	-3,155
18	Ankit Sharma	9313878569	T1-1208	28,287	31,442	-3,155
19	Nitin Kharbanda	9357763030	T2-404	28,287	31,442	-3,155
20	Mohd Anees Khan	9311492225	T1-1007	28,287	31,442	-3,155
21	Sweety Dudeja	9999640312	T6-7010	13,585	15,041	-1,456
22	Pratibha Singh Rathore	7891476456	T6-606	13,585	15,041	-1,456
23	Inderjit Singh	9872840300	T7-3010	13,585	15,041	-1,456
24	Milind Bhargava	9971949406	T5-308	28,287	31,442	-3,155
25	Akhil Agrawal	9936422331	T1-707	28,287	31,442	-3,155
26	Chanakya Dagar	8750111250	T1-1304	28,287	31,442	-3,155
27	Rajesh Kumar	9466394756	T2-303	28,287	31,442	-3,155
28	Pooja Sharma	8092686815	T1-903	28,287	31,442	-3,155
29	Prem Kaur	9811622328	T3-108	28,287	31,442	-3,155
30	Aalok Jauhari	9711672396	T1-1004	28,287	31,442	-3,155
31	Chandra Prakash Chabra	9999334376	T1-1008	28,287	31,442	-3,155
32	Sunita Bansal	9717252224	T2-504	28,287	31,442	-3,155
33	Sanjay Mahabaleshwar Nuli	9313089944	T3-1204	28,287	31,442	-3,155
34	Meenakshi Manocha	9810338745	T5-1404	28,287	31,442	-3,155
35	Sarita	9911417196	33	44,675	48,553	-3,878
36	Puneet Anand	9899787803	14-B/3	28,287	31,442	-3,155
37	Sanu Mittal	9711954457	5M/84	25,282	28,043	-2,761
38	Arun Salhotra	8860404433	5K-91	28,287	31,442	-3,155
39	Manju Aggarwal	9818180103	A-48	28,287	31,442	-3,155
40	Avadhesh Prasad	9999236100	6	25,282	28,043	-2,761
41	Anju Devi	8470987749	B-37	13,585	15,041	-1,456
42	Aman Garg	9810007446	2330	28,287	31,442	-3,155
43	Disha Garg	8826828268	T5-204	28,287	31,442	-3,155
44	Vikash Kumar	7042521920	T5-205	25,282	28,043	-2,761
45	Ashish Saraf	9852437371	T5-303	28,287	31,442	-3,155
46	Moti Ram	9990047383	T5-403	28,287	31,442	-3,155
47	Nitin Arora	9811512685	T5-501	25,282	28,043	-2,761
48	Sangeeta Kumari	7004238976	T5-608	28,287	31,442	-3,155
49	Saurabh Sabharwal	9811807544	T5-1004	28,287	31,442	-3,155
50	Sandhya Kalra	9811665588	T1-308	28,287	31,442	-3,155
51	Abhishek Sharma	9766212000	T1-1205	25,282	28,043	-2,761
52	Mithlesh	8010827893	T1-1108	28,287	31,442	-3,155
53	Rajeev Sharma	9999071808	T1-701	25,282	28,043	-2,761
54	Abhishek Dutt	9891310696	T1-607	28,287	31,442	-3,155
55	Poonam Ahluwalia	9896655522	T1-507	28,287	31,442	-3,155
56	Mukesh Chand	9810167980	T1-305	25,282	28,043	-2,761
57	Priya Yadav	9350459178	T1-208	28,287	31,442	-3,155
58	Rohit Prabhakar	8860618063	T1-204	28,287	31,442	-3,155
59	Ashok Kumar	9212259667	T1-503	28,287	31,442	-3,155

60	Sumitra Kumari	9873857976	T1-1104	28,287	31,442	-3,155
61	Preeti Grover	9899430103	T1-1206	25,282	28,043	-2,761
62	Vikram Singh Bisht	9810661518	T5-106	25,282	28,043	-2,761
63	Krishan Kumar Goel	9818667886	T5-108	28,287	31,442	-3,155
64	Sumit Uppal	7503925622	T5-102	25,282	28,043	-2,761
65	Jayant Kumar Vatsa	9413460303	T6-702	13,585	15,041	-1,456
66	Sunil Kumar	8826475294	T6-708	13,585	15,041	-1,456
67	Sukhveer	9899595588	T6-1010	13,585	15,041	-1,456
68	Jatin Raheja	8447808877	T5-502	25,282	28,043	-2,761
69	Nirmala	9911284599	T5-506	25,282	28,043	-2,761
70	Poonam Pokhariyal	9971712986	T5-1007	28,287	31,442	-3,155
71	Sanyogita Khanna	9810500437	T2-705	25,282	28,043	-2,761
72	Rajeev Mehra	8750000875	T2-1001	25,282	28,043	-2,761
73	Parul Mittal	9891850765	T2-805	25,282	28,043	-2,761
74	Anil Kumar	9818631114	T2-601	25,282	28,043	-2,761
75	Pawan Kumar Ujjinwal	9711287841	T2-908	28,287	31,442	-3,155
76	Deepak Sikhwal	9891231534	T2-704	28,287	31,442	-3,155
77	Ashima Hans	9811634752	T2-606	25,282	28,043	-2,761
78	Kiran Kumar	9810787670	T1-703	28,287	31,442	-3,155
79	Santosh Kumari	9416834464	T5-1005	25,282	28,043	-2,761
80	Rajni Bansal	9899076126	T6-808	13,585	15,041	-1,456
81	Rahul	9416895566	T6-901	13,585	15,041	-1,456
82	Sanjiv Kumar	9896148558	T6-206	13,585	15,041	-1,456
83	Shailendra Kumar Tewari	9654187106	T2-901	25,282	28,043	-2,761
84	Vivek Agarwal	9811600215	T2-301	25,282	28,043	-2,761

Further, he also submitted Ledgers and Credit Notes in respect of all the home buyers vide his submissions dated 25.11.2019 to prove his claim.

29. This Authority has carefully considered all the submissions filed by the Applicants, the Respondent, and the other material placed on record. It was found by us that the Applicant No. 1 and 2, vide their complaints dated 09.10.2018 and 16.12.2019 respectively alleged that the Respondent was not passing on the benefit of ITC to them although he was availing ITC on the purchase of the inputs at the higher rates of GST which had resulted in the 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 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%. Therefore the DGAP 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 also found that the Respondent had not reduced the basic price of his flats by 2.67% on the account of benefit from ITC although he had been charging his homebuyers, GST at the increased rate of 12% or 8% on the pre-GST basic price. The DGAP also reported that the Respondent has thus contravened the provisions of Section 171 of the CGST Act, 2017. The DGAP further reported that the amount of benefit of ITC which had 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 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 was clear to us from the perusal of the above facts that the Respondent had 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 had been contravened by the Respondent since he had not passed on the above benefit to his home buyers. Further, he had 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 was clear to us that the Respondent had realized additional amounts of Rs. 25,282/- each from Applicant Nos. 1 and 2, inclusive of GST. The Respondent had 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 worked out to be Rs. 1,95,86,429/- (Rs. 1,95,35,865 + Rs. 25,282/- + Rs. 25,282/-) and the same was tabulated in Annexure- 17, 18 and 19 of the Report of the DGAP dated 19.06.2019. The above computation of the profiteered amount has been admitted to be correct by the Respondent vide his submissions dated 06.09.2019.

31. Further, we observed that the Respondent, vide his submissions dated 06.09.2019, contended that he had already passed on the 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 had submitted a 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 mentioned entry/entries *indicating "GST benefit pass on to Homebuyers"* and had also submitted sample acknowledgment letters from 84 out of 763 unit buyers in support of his claim of having passed on the benefit of ITC to them in terms of Section 171 of CGST Act. We

also found that perusal of Table-D of the DGAP Report dated 19.06.2019 suggested that an amount of Rs. 81,82,783/- had been claimed to have been passed on by the Respondent to his home buyers on account of ITC benefit. However, it was 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/- was not 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 the benefit of ITC to his home buyers, taking the total ITC benefit passed on to Rs. 2,18,87,807/- also needed to be verified by the DGAP. Accordingly, the DGAP was directed to further verify the total amount of ITC benefit claimed to have been passed on to his home buyers by the Respondent, as per the provisions of Rule 133 (4) of the above Rules, and submit his Report clearly mentioning the verified amount of benefit passed on by the Respondent to his home buyers and the balance amount that was yet to be passed on to each of the home buyers.

32. The DGAP has submitted his report dated 28.02.2020 after re-investigating the case under Rule 133 (4) of the CGST Rules, 2017 on 02.03.2020 to this Authority. The above report of the DGAP is discussed in the subsequent paras.

33. The DGAP has stated that after receipt of Order No. 3/2020 dated 02.01.2020 from this Authority, a letter dated 22.01.2020 was issued to the Respondent calling for all credit notes, demand notes, and ledger accounts of all homebuyers for verification of the amount of benefit of ITC passed on by the Respondent. The Respondent submitted the soft

copies of ledgers and a summary list of ITC passed on to the homebuyers in his project "Paradise, Sector -62" and stated that he had passed on the complete ITC benefit in most of the cases and in the remaining cases he would pass on the ITC benefit based on final order issued by this Authority.

34. The DGAP has stated that the case was reinvestigated based on data submitted by the Respondent on 03.02.2020. The main issues which were examined by the DGAP are given as follows:-

a) To verify the total amount of Input Tax Credit benefit claimed to have been passed on to their home buyers by the Respondent till the date of order and the balance amount still to be passed on to each of the home buyers.

b) To investigate the issue of passing on the benefit of additional Input Tax Credit in respect of aforesaid three projects of the Respondent in terms of Section 171(2) of the CGST Act, 2017 read with Rule 133 (5) of the CGST Rules, 2017.

35. The DGAP has further stated that the issue of verification of Input Tax Credit benefit claimed to have been passed on to his home buyers by the Respondent has been resolved by matching the list of input tax credit passed on to individual customers with the copies of Ledger Accounts submitted by the Respondent. The DGAP, on verification of the copies of Ledger Accounts, has observed that the Respondent has indeed passed on the ITC benefit of Rs. 1,89,36,651/- to 740 home buyers and Rs. 17,51,743/- to 16 commercial shops. A summary of

category-wise input tax credit benefit required to be passed on and the benefit actually passed on by the Respondent till the date of Order i.e. 02.01.2020 by the Respondent, was furnished by the DGAP as given in table-E below: -

Table- E (Amount in Rs.)

S r. N o.	Category of Customers	No. of Units	Profiteering Amount	Benefit already Passed on by the Respondent	Further Benefit to be passed on by the Respondent	Difference	Remark
A	B	C	F	G		H=F-G	I
1	Other Buyers (Residential)	592	1,45,02,410	1,69,33,260	0	24,30,850	No further benefit is to be passed on as per Annex-2
2	Other Buyers (Residential)	148	39,44,122	20,03,391	19,40,731	19,40,731	Further benefit to be passed as per Annex-3
	Total Residential (A)	740	1,84,46,532	1,89,36,651	19,40,731		
3	Commercial Shop Buyers	14	5,59,797	15,52,411	0	-9,92,617	No benefit to be passed on as per Annex-4
4	Commercial Shop Buyers	9	5,80,100	12,790	5,67,310	5,67,310	Further benefit to be passed as per Annex-5
5	Commercial Shop Buyers	1	0	1,86,542	0	-1,86,542	No Consideration paid Post-GST, However, Respondent passed on benefit. Details as per Annex-6 .
6	Commercial Shop Buyers	3	0	0	0	0	No Consideration Paid Post-GST and no benefit passed on.
7	Unsold Shop	60				0	Unsold Units
	Total Commercial (B)	87	11,39,897	17,51,743	5,67,310		
	Grand Total (C) = (A) + (B)	827	1,95,86,429	2,06,88,394	25,08,041		

36. The DGAP has stated from the above table-E that out of 740 home buyers, in the case of 148 home buyers, the Respondent was required to pass on the ITC benefit of Rs.39,44,122/- whereas the Respondent

had passed on the ITC benefit of Rs. 20,03,391/- only, therefore, required to pass on the remaining ITC benefit of Rs. 19,40,731/- to these 148 home buyers, details of which were given in Annexure-3 of the DGAP's report. The DGAP has further stated that out of 23 commercial shop buyers, in the case of 9 commercial shop buyers, the Respondent was required to pass on the ITC benefit of Rs. 5,80,100/- whereas the Respondent had passed on the ITC benefit of Rs. 12,790/- only, therefore, he was required to pass on the remaining ITC benefit of Rs. 5,67,310/- to these 9 commercial shop buyers, details of which were given in Annexure-5 of the DGAP's report.

37. The above Report was considered by this Authority in its meeting held on 03.03.2020 and it was decided that the Applicants and the Respondent be asked to appear before this Authority on 26.03.2020. The Respondent was issued a notice on 04.03.2020 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 both the parties. Instead, the Respondent has filed written submissions dated 18.06.2020 which have been discussed in subsequent paras.
38. The Respondent has submitted that the incremental tax paid on services should not form part of profiteering. He has further elaborated that during the Pre-GST period, the rate of Service Tax charged on the input services was 15%, the credit of which was available, whereas, during the GST regime, the common GST rate for services has been increased from existing (pre-GST) 15% to 18%, the credit of which was also available in post GST. Therefore, no additional benefit has

accrued to him in respect of input services as credit for the same was available in both, the pre and post GST eras, and the only difference was that the tax rate on services had been increased from 15% to 18%. The Respondent has submitted the following illustration to strengthen his contention:-

	Pre- GST	Post- GST
Particulars	Amount (in Lacs)	Amount (in Lacs)
Expenses	1000	1000
Service Tax paid @15%	150	180
Cenvat Credit available	150	180
Turnover	5000	5000
CENVAT/Turnover	3.00%	3.60%
Incremental		.60%

The Respondent has further submitted that in the instant case, during the post-GST regime, he has availed ITC amounting to Rs. 18,13,110/- on input services, which meant that ITC amounting to Rs. 3,02,185 (18,13,110 * 3/18) pertained to the incremental tax paid on procurement of input services and the same should be excluded from the total amount of profiteering calculated by the DGAP.

39. The Respondent has further submitted that he had passed on the ITC benefit as per his own calculations which has resulted in excess passing on of the benefit to some customers and lesser benefit to the other customers as per the computation made by the DGAP in his report. In this regard, it was submitted that the formula for calculation of profiteering was not clear to the Respondent therefore, he has passed on interim ITC benefit to his customers.

40. The submissions of the Respondent dated 10.06.2020 were forwarded to the DGAP for filing clarifications under Rule 133 (2A) of the CGST Rules, 2017. The DGAP has filed the clarifications dated 02.07.2020 on the above submissions on 06.07.2020.

41. The DGAP vide clarifications dated 02.07.2020 has stated that in the erstwhile pre-GST regime, various taxes and cesses were being levied by the Central Government and the State Governments, which got subsumed in the GST. Out of these taxes, the input tax credit of some taxes was not allowed in the erstwhile tax regime. In the case of construction service, while the input tax credit of Service Tax was available, the input tax credit of Central Excise Duty paid on inputs was not available to the service provider. Such input taxes used to get embedded in the cost of the goods or services supplied and resulted in increased prices. With the introduction of GST with effect from 01.07.2017, all these taxes got subsumed in the GST and the input tax credit of GST has been made available in respect of all goods and services unless specifically denied. Broadly, the additional benefit of the input tax credit in the GST regime would be limited to those input taxes, the credit of which was not allowed in the pre-GST regime but allowed in the GST regime. This additional benefit was required to be passed on by the suppliers to the recipients by way of commensurate reduction in price, in terms of Section 171 of the GST Act, 2017. Therefore, the DGAP has stated that the claim of the Respondent that the ITC in respect of services should be excluded from the profiteering amount was not tenable.



42. The clarifications of the DGAP dated 02.07.2020 on the submissions of the Respondent dated 10.06.2020 were forwarded to the Respondent for filing his rejoinder, if any. The Respondent, vide his letter dated 11.08.2020, has stated that he has completed his submissions and requested for the closure of the hearing. Therefore, this Authority had closed the hearing in the matter on 13.08.2020.
43. We have carefully considered all the submissions filed by the Applicants, the Respondent, and the other material placed on record and find that Applicant Nos. 1 and Applicant No. 2, vide their complaints dated 09.10.2018 and 16.12.2018 respectively, had alleged that the Respondent was not passing on the benefit of ITC to them on purchase of the flats, which they had purchased in the "Paradise" Project being executed by the Respondent in Sector-62, Gurugram, even though he was availing ITC on the purchase of the inputs at the higher rates of GST which had resulted in the benefit of additional ITC to him and 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 and forwarded to the DGAP for investigation under Rule 129 (1) of the above Rules. The DGAP vide his Report dated 19.06.2019 had found that the Respondent had profiteered an amount of Rs. 1,95,86,429/- by not passing on the ITC benefit to his buyers. The DGAP has further stated that the Respondent had claimed to have passed on the ITC benefit of Rs. 81,82,783/- to his buyers. Accordingly, the DGAP has stated that the Respondent was further required to pass on an amount of Rs. 1,14,23,633/- to his buyers. This Authority had issued notice dated

10.07.2019 to the Respondent to appear before the Authority for hearing. During the course of the hearing, the Respondent has claimed that he had already passed on the benefit of Rs. 2,06,88,394 to his buyers. Based on the documents submitted by the Respondent this Authority had issued interim order No. 03/2020 dated 02.01.2020 under Rule 133 (4) of the CGST Rules, 2017, directing the DGAP to verify the veracity of the claim of the Respondent and to verify whether he had actually passed on the ITC benefit to his buyers or not. Accordingly, the DGAP has submitted his Report dated 28.02.2020 under Rule 133 (4) of the CGST Rules, 2017. The DGAP vide his above report has stated that the Respondent had passed on an amount of Rs. 1,89,36,651/- to 740 home buyers and Rs. 17,51,743/- to 24 commercial shop buyers. The DGAP has further illustrated that the Respondent was further required to pass on the ITC benefit of Rs. 19,40,731/- to 148 home buyers and Rs. 5,67,310/- to 9 commercial shop buyers the details of which have been given in the Annexure-3 and Annexure-5 of the DGAP report dated 28.02.2020.

44. It is clear from the perusal of the above Reports that the DGAP has computed the ratio of CENVAT to the turnover for the pre GST period and compared it with the ratio of ITC to the turnover for the post GST period and then computed the percentage of the benefit of additional ITC which the Respondent is required to pass on to the flat buyers. The above ratios have been computed by the DGAP based on the Service Tax and GST Returns filed by the Respondent during both the above periods and the ITC Registers maintained for the above periods by him and hence, the ratios calculated by the DGAP are based on the

factual record submitted by the Respondent and therefore, they can be relied upon while computing the profiteered amount. The Respondent has also not raised any objection against the methodology employed by the DGAP while calculating the above ratios. The above methodology has also been approved by this Authority in all the cases where the benefit of ITC is required to be passed on. Therefore, the above methodology is appropriate, logical, reasonable, and in consonance with the provisions of Section 171 of the CGST Act, 2017.

45. The Respondent has also claimed that he has passed on the benefit of Rs. 2,06,88,394/- to his buyers on account of ITC. He has also submitted copies of the acknowledgments from the buyers in respect of 84 (Approx. 10%) buyers out of 763 total beneficiaries of ITC Benefit vide his submissions dated 05.11.2019 and 25.11.2019 as mentioned in the Para - 28 above. The Respondent further submitted copies of Ledger Accounts and credit notes in respect of all the buyers vide his submissions dated 25.11.2019. The DGAP has also categorically admitted in his Report dated 28.02.2020 that he has verified the above claim of the Respondent and found it to be correct. The DGAP has also submitted Table-E supra and stated that the benefit passed on by the Respondent to the recipients was less than what he ought to have passed on in the case of 148 residential flats and 9 commercial shops (Sr. No. 2 & 4 of Table) by an amount of Rs. 19,40,731/- and Rs. 5,67,310 respectively. The details of these amounts have been furnished vide Annexure-3 and Annexure-5 of the DGAP's Report dated 28.02.2020. It has also been stated that the benefit passed on by the Respondent was higher than what he should have passed on

in respect of 592 residential flats and 15 commercial shops (Sr. 1, 3 & 5 of Table) by an amount of Rs. 24,30,850/- and Rs. 11,79,159/- respectively. The details of this excess benefit passed on by the Respondent have been given in Annexure-2, Annexure-4, and Annexure-6 of the DGAP's Report dated 28.02.2020. He has further stated that the excess benefit passed on to some recipients, could not be set off against the additional benefit required to be passed on to the other recipients and it could only be adjusted against any future benefit that might accrue to such recipients. Based on the above admission of the DGAP, the claim of the Respondent of having passed on the benefit of ITC passed as per Table-E is held to be correct. However, the Respondent shall pass on the remaining amount of ITC benefit to the 148 home buyers and 9 commercial shop buyers as per Annexure-3 and Annexure-5 of the DGAP report. He shall also not adjust the excess benefit passed on to the flat buyers mentioned in Annexure-2, Annexure-4, and Annexure-6 against the benefit to be passed on to the beneficiaries mentioned in the Annexure-3 and Annexure-5 of the DGAP report.

46. The Respondent has contended that the Service Tax was being computed @15% during the pre GST period which was increased to 18% in the post GST period and hence this incremental tax of 3% paid on the services should not form part of the profiteered amount as it did not amount to the additional benefit of ITC. In this regard, it would be pertinent to mention that the Respondent cannot appropriate the additional ITC which he has earned after coming into force of the ITC as it does not form part of his profit. The ITC available to him by paying

GST @18% on the purchase of the services is a concession which has been granted by the Central and the State Government out of their scarce tax revenue and he cannot enrich himself at the expense of the public exchequer. He is required to pass on the benefit of the incremental ITC as the same has not been built in by him in his initial cost of the flat. He cannot put the buyers in double jeopardy by availing the benefit of additional ITC as well as by not reducing the prices of the flats. The Respondent is not required to pay even a single penny from his own pocket as the benefit of ITC and hence he cannot deny the above benefit. Moreover, the benefit of ITC is also available to the suppliers of the Respondent from whom he is purchasing services and other inputs, and accordingly, such suppliers are also bound to pass on the benefit of ITC to the Respondent which would result in a reduction of cost of the flats built by the Respondent. It would also be worthwhile to mention that the Respondent is also utilizing the ITC to which he has become entitled on the purchase of the services post GST while discharging his tax liability and hence he is using the above amount in the furtherance of his business and therefore, he cannot refuse to pass on the benefit of ITC. Accordingly, the above contention of the Respondent is frivolous and hence it cannot be accepted.

47. It is established from the perusal of the above facts that the Respondent has benefited from the additional ITC to the extent of 2.67% 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 benefit of ITC to his customers. Thus the profiteered amount is determined as **Rs. 1,95,86,429/-** inclusive of GST @ 12% or 8% in terms of Rule 133 (1) of the CGST Rules, 2017. Further, it is also determined that the Respondent has realized an additional amount of **Rs. 25,282/-** from each of the Applicant No. 1 and Applicant No. 2 which includes both the profiteered amount @ 2.67% of the taxable amount (base price) and 12% GST on the said profiteered amount.

48. As has been held supra the Respondent has passed on the benefit of Rs. 2,06,88,394/- to his buyers on account of ITC which has been duly confirmed by the DGAP. Therefore, the Respondent is directed to pass on the balance benefit of ITC of Rs. 19,40,731/- to the remaining 148 residential flat buyers and Rs. 5,67,310 to the remaining 9 commercial shop buyers, mentioned at Sr. 2 & 4 of Table-E, as per Annexure-3 and Annexure-5 of the DGAP's Report dated 28.02.2020. The details of the profiteered amount and the buyers have been mentioned by the DGAP in the above Annexures. These buyers are identifiable as per the documents placed on record and therefore, the Respondent is directed to pass on an aggregate amount of Rs. 25,08,041/- to the above mentioned 157 buyers 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-3 and Annexure-5 attached with the Report dated 28.02.2020 in terms of Rule 133 (3) (b) of the above Rules. The Respondent shall not adjust any excess ITC benefit which he has passed on as per Annexure-2, Annexure-4, and Annexure-6 against

the benefit which is due to the beneficiaries as per Annexure-3 and Annexure-5. In case the above amount is not refunded by the Respondent during the above period it shall be recovered by the concerned Commissioner CGST/CGST and paid to the eligible buyers.

49. It is also apparent from the record that the Respondent has passed on ITC benefit of Rs. 2,06,88,394/- during the month of March, 2019 and August, 2019. Therefore, he is also liable to pass on interest @18% on profiteered amount to the flat buyers from the dates from which he has received the additional amount of consideration from them till the passing on of the ITC benefit, as he has used this amount in his business, as per the provisions of Section 171 (1) of the CGST Act, 2017 read with Rule 133 (3) (b) of the above Rules. Accordingly, the DGAP is directed to ensure that the interest is paid to be eligible house buyers and submit report confirming payment of the interest. In case the interest is not paid the same shall be recovered by the concerned CGST/SGST Commissioner and paid to the eligible buyers.

50. Accordingly, 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 of the above Project 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.

51. It is also evident from the above narration of the facts that the Respondent has denied the benefit of ITC to the buyers of the flats being constructed by him in his above project in contravention of the

provisions of Section 171 (1) of the CGST Act, 2017 and he has thus resorted to profiteering. Hence, he has committed an offence under Section 171 (3A) of the CGST Act, 2017, and therefore, he is liable for imposition of penalty under the provisions of the above Section. Accordingly, a Show Cause Notice be issued to him directing him to explain 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.

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

53. As per the provisions of Rule 133 (1) of the CGST Rules, 2017 this order was required to be passed within a period of 6 months from the date of receipt of the Report from the DGAP under Rule 129 (6) of the above Rules. Since the present Report has been received by this Authority on 02.03.2020 the order was to be passed on or before 01.09.2020. However, due to the prevalent pandemic of COVID-19 in the Country, this order could not be passed on or before the above date due to force majeure. Accordingly, this order is being passed today in terms of the Notification No. 65/2020-Central Tax dated 01.09.2020 issued by the Government of India, Ministry of Finance

(Department of Revenue), Central Board of Indirect Taxes & Customs
under Section 168 A of the CGST Act, 2017.

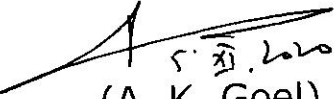
54. A copy each of this order be supplied to both the Applicants, the Respondent and Commissioners CGST/SGST, Haryana for necessary action. File be consigned after completion.

Sd/-
(Dr. 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/2019/5534-5542 Date: 05.11.2020

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. Sh. Sahil Gupta on behalf of his mother Smt. Sushma Gupta, e-mail id sahhils@gmail.com.
4. Director General Anti-Profitteering, Central Board of Indirect Taxes & Customs, ^{2nd} Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.
5. The Commissioner of State Tax, Vanijya Bhavan, Plot No. 1-3, Sector-5, Panchkula, Haryana- 134151,
6. The Commissioner, CGST Gurugram, Plot no. 36 & 37, Sector-32, Gurugram, Haryana-122001,
7. Guard File/NAA Website.

