

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

I.O. 27/2020
Date of Institution 16.04.2020
Date of Order 27.11.2020

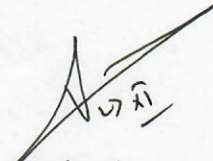
In the matter of:

1. Sh. Prabhat Kumar, 39-AB, Tagore Garden, Ambala Cantt, Haryana-133001.
2. Director-General of Anti-Profiteering, Central Board of Indirect Taxes & Customs, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.

Applicants

Versus

1. M/s. Mascot Buildcon Pvt. Ltd., R-26, Nehru Enclave, New Delhi- 110019.
2. M/s Home Town Properties Private Limited, 85-86- Manglapuri, Gurgaon-Mehrauli Road, New Delhi-110044.
3. Sh. Dharam Singh, S/o Shis Ram, H. No. 2/E, Village-Lakhnola, Tehsil & District-Gurgaon, Haryana- 122004.


Respondents

Quorum:-

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

Present:-

1. Sh. Prabhat Kumar and Sh. Begraj for Applicant No. 1.
2. Sh. Amit Agarwal, Sh. Ashok Anand, Sh. Rajesh Saini, Sh. Jagmohan Singh and Sh. Umesh Gupta, Homebuyers.
3. Sh. Rana Ashok Rajnish, Assistant Commissioner, Sh. Sachin Kodnani, Superintendent for Applicant No. 2.
4. Sh. M. K. Gandhi, Sh. Aseem Mehrotra, Ms. Sonal Dawer, Advocates, Ms. Ambika Singh, Ms. Priyanka Arora, and Ms. Rhydhi, Chartered Accountants, and Sh. Devender Kumar Authorised Representative for Respondents Nos. 1 & 2.
5. Sh. Karan Singh, for Respondent No. 3.

ORDER

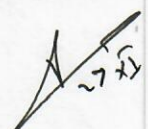
1. The Report dated 27.02.2019 and subsequent reports dated 16.04.2019, 10.05.2019, 17.07.2019, and 12.09.2019, had been received from the Director-General of Anti-Profiteering (DGAP) after an investigation under Rule 129 (6) of the Central Goods & Service Tax (CGST) Rules, 2017.
2. After perusal of the submissions of DGAP, this Authority, had afforded numerous opportunities of hearing to Respondent No. 1 & the above

Applicants between 27.03.2019 and 22.08.2019. During the course of hearings, Respondent No. 1, vide his submissions, had averred before this Authority that, in this project, there was a sharing of the floor area ratio between the landowner i.e. the Respondent No. 3, the facilitator i.e. the Respondent No. 2, and himself (Respondent No. 1).

3. Based on the above, this Authority had added M/s Home Town Properties Private Limited and Sh. Dharam Singh as Respondents in the matter (the Respondent No. 2 & 3 respectively).
4. Having considered the Report and various submissions of all the Respondents and the Applicants, we found that the contents of the submissions made by Respondents evidence that all the Respondents were stakeholders in the subject project holding 65%, 13% & 22% share in the sanctioned Floor Area Ratio (FAR) respectively and that these facts were not known to the DGAP at the time of investigation into the matter. It was also clear that only one of the three Respondents, i.e. Respondent No. 1, had availed the entire Input Tax Credit (ITC) and hence was required to pass on the commensurate benefit thereof to the recipients. It, therefore, made it clear to us that this matter, including its computations, needed to be revisited by the DGAP through a thorough investigation, keeping in view that the share of FAR pertaining to the Respondent No. 2 & 3 could not be equated to/ treated as unsold and hence, the entire computation of profiteering would stand modified. We were of the view that since the requisite information including the details of area sold and area unsold in the pre-GST and post-GST periods was now available, the said aspect also needed to be examined in depth. We also took note of the fact that Respondent No. 1, as also other

Respondents and the Applicant, had submitted other details/information during the hearings held before this Authority, which needed to be considered afresh by the DGAP.

5. Given the above findings, this Authority had directed the DGAP to further investigate the matter under Rule 133(4) of the Central Goods & Service Tax Rules, 2017 and re-compute the amount of profiteering based on the documents/information available on record. The DGAP was also directed that he can solicit any other information/documents, etc. from Respondent No. 1 as also from other Respondents and the above Applicants. A comprehensive Report was to be furnished thereafter within a period of 3 months.
6. Subsequently, the DGAP has furnished his Report dated 23.03.2020 received on 16.04.2020 after re-investigation in the matter under Rule 133(4) of the Central Goods & Service Tax Rules, 2017 and has reported that the above facts were not known to the DGAP at the time of initial investigation as complete and relevant documents were not submitted by the Respondent No. 1, therefore, summons under Section 70 of the Central Goods and Services Tax Act, 2017 read with Rule 132 of the above Rules were issued on 08.11.2019 to Shri Ram Dhari Gupta, Director of the Respondent No. 1 to appear before the DGAP on 15.11.2019 and produce the relevant documents. The DGAP has intimated that the period of investigation was extended up to August 2019 as it would cover profiteering of flats sold between September 2018 to August 2019. Thus, the period covered by the current investigation was from 01.07.2017 to 31.08.2019. The DGAP has informed that the time limit to complete the investigation was



extended up to 25.03.2020 by this Authority, vide letter dated 24.12.2019, in terms of Rule 129(6) of the Rules.

7. The DGAP has stated that Respondent No. 1 in response to his letter dated 10.10.2019 had furnished his replies. Thereafter, the DGAP in his findings has stated that the main issue to be determined was the quantum of profiteering. The DGAP has analyzed from the information submitted by Respondent No. 1, duly reconciled with the ST-3, VAT, GSTR-1, and GSTR-3B Returns for the period from April 2016 to August 2019, the details of the input tax credit availed by him, his turnover from the commercial project "Oodles Skywalk" and computed the ratios of input tax credit to turnover, during the pre-GST (April 2016 to June 2017) and post-GST (July 2017 to August 2019) periods which have been furnished by the DGAP in Table-A below:-

Table-'A'

(Amount in Rs.)

S. No.	Particulars	Total (Pre-GST) (April 2016 to June 2017)	Total (Post-GST) (July 2017 to August 2019)
(1)	(2)	(5)=(3)+(4)	(8)=(6)+(7)
1	CENVAT of Service Tax Paid on Input Services as per ST-3 (A)	28,80,152	-
2	Input Tax Credit of VAT Paid on Purchase of Inputs as per VAT Returns (B)	20,54,700	-
3	Total CENVAT/Input Tax Credit Available (C)= (A+B)	49,34,852	-
4	Input Tax Credit of GST Availed as per GST Return (D)	-	1,57,93,934
5	Total Taxable Turnover as per Returns (E)	9,65,21,340	15,56,03,708
6	Turnover of Cancelled units (F)	-	48,18,589
7	Net Taxable Turnover (G)	9,65,21,340	15,07,85,119
8	Total Saleable Area in the project (Sq. ft) (H)	3,69,733.00	3,69,733.00
9	Area Sold relevant to Taxable turnover as per returns (I)	90,170.73	89,258.00
10	Relevant CENVAT/Input Tax Credit (J)= [(C)*(I)/(H)] or [(D)*(I)/(H)]	12,03,515	38,12,846
11	Ratio of CENVAT/ Input Tax Credit to Taxable Turnover [(K)=(J)/(G)]	1.25%	2.53%

8. The DGAP has claimed from the above Table-'A' that the input tax credit as a percentage of the total turnover which was available to the

Respondent No. 1 during the pre-GST period (April 2016 to June 2017) was 1.25% and during the post-GST period (July 2017 to August 2019), it was 2.53% which confirmed that post-GST, the Respondent No. 1 has benefited from additional input tax credit to the tune of 1.28% [2.53% (-) 1.25%] of the turnover.

9. The DGAP has accordingly examined the issue of profiteering by comparing the applicable tax rate and input tax credit available during the pre-GST period (April 2016 to June 2017) when Service Tax @ 4.5% and VAT@ 6.8% were payable with the post-GST period (July 2017 to August 2019) when the effective GST rate was 12% on construction service, vide Notification No.11/2017-Central Tax (Rate), dated 28.06.2017. Based on the figures contained in Table-'A' above, the comparative figures of the tax rate, the ratio of input tax credit to the turnover during the pre-GST and post-GST periods, the recalibrated base price based on the benefit of input tax credit and the excess collection/realization by the Respondent No. 1 (profiteering) has been tabulated in the Table-'B' below:-

Table-'B'

(Amount in Rs.)

S. No.	Particulars		Pre-GST	Post- GST
1	Period	A	April 2016 to June 2017	July 2017 to Aug 2019
2	Output tax rate (%)	B	11.30%	12%
3	The ratio of CENVAT/ Input Tax Credit to Taxable Turnover as per Table - D above (%)	C	1.25%	2.53%
5	Increase in input tax credit availed post-GST (%)	D= 2.53% less 1.25%		1.28%
6	Analysis of Increase in input tax credit:			
7	Base Price collected during July, 2017 to August, 2019	E		15,56,03,708
8	Less: Units cancelled	F		48,18,589
9	Net Base Price collected from July 2017 to August 2019	G=E-F		15,07,85,119
10	GST Collected @ 12% over Basic Price	H= G*12%		1,80,94,214
11	Total Demand collected	I=G+H		16,88,79,334
12	Recalibrated Basic Price	J=G*(1-D) or 98.72% of G		14,88,55,069
13	GST @12%	K=J*12%		1,78,62,608
14	Commensurate demand price	L= J+K		16,67,17,678
15	Excess Collection of Demand or Profiteering Amount	M= I - L		21,61,655

10. The DGAP has claimed from Table-'B' above that additional input tax credit of 1.28% of the turnover should have resulted in a 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 such additional input tax credit was required to be passed on to the recipients.

11. The DGAP has also reported that based on the aforesaid CENVAT/input tax credit availability during the pre-GST and post-GST periods and the details of the amounts collected by Respondent No. 1 from the Applicant and other buyers during the period 01.07.2017 to 31.08.2019, the amount of benefit of input tax credit not passed on to the recipients or in other words, the profiteered amount came to Rs. 21,61,655/- (Rs. Twenty One Lakh Sixty One Thousand six hundred and Fifty Five only) which included GST @ 12% on the base profiteered amount of Rs. 19,30,049/- (Rs. Nineteen Lakh Thirty Thousands Forty Nine only). The buyer (who have made payments post-GST) and the unit wise break-up of this amount has been given as in Table-'C' below:-

Table-'C'

(Figures in INR)

S. No.	Customer Name	Unit No.	Size	DEMAND 01/07/2017 to 31/08/2019	GST @12%	Total	Recalibrated demand	GST @12%	Total	Amount of profiteering	STATUS
A	B	C	D	E	F=0.12*E	G=E+F	H=0.9872*E	I=0.12*H	J=H+I	K=G-J	
1	JAI PRAKASH	G - 2	403.65	2733919	3,28,070	30,61,989	2698925	323871	3022796	39193	
2	MUKESH CHAND JAIN	G - 30	372	1732590	2,07,911	19,40,501	1710413	205250	1915662	24838	
3	MAHESH KUMAR	G - 37	365.33	1364328	1,63,719	15,28,047	1346865	161624	1508488	19559	
4	JAIVINDER SINGH	G - 29	327.23	1259839	1,51,181	14,11,020	1243713	149246	1392959	18061	
5	NISHITH KHANTAL	G - 96	645.84	3268920	3,92,270	36,61,190	3227078	387249	3614327	46863	
6	SUNEEL KUMAR KAPUR	G - 104	528.73	2859971	3,43,197	32,03,168	2823364	338804	3162167	41001	
7	RAJENDER	G - 46	322.06	1239931	1,48,792	13,88,723	1224060	146887	1370947	17776	
8	RAJENDER	F - 114	312.16	1451544	1,74,185	16,25,729	1432964	171956	1604920	20809	
9	TARUN KOHLI	G - 110	584.49	2160277	2,59,233	24,19,510	2132625	255915	2388541	30970	

10	EKTA YADAV	G - 3	451.44	13515	1,622	15,137	13342	1601	14943	194	
11	VIKAS YADAV	G - 44	322.27	1686922	2,02,431	18,89,353	1665329	199840	1865169	24184	
12	VIKRAM SINGH	G - 33	338.42	1263829	1,51,659	14,15,488	1247652	149718	1397370	18118	
13	SAROJ	G - 32	338.42	1263829	1,51,659	14,15,488	1247652	149718	1397370	18118	
14	CHARAN SINGH BHANDARI	G - 92	623.67	3396509	4,07,581	38,04,090	3353034	402364	3755398	48692	
15	ANKIT AGGARWAL	G - 52	351.98	1321243	1,58,549	14,79,792	1304331	156520	1460851	18941	
16	AKSHMA DATT SHARMA	G - 65	665.22	2594359	3,11,323	29,05,682	2561151	307338	2868489	37193	
17	NIDHI	G - 4	382.12	2330932	2,79,712	26,10,644	2301096	276132	2577228	33416	
18	HEMANT YADAV	G - 108	584.92	3187814	3,82,538	35,70,352	3147010	377641	3524651	45701	
19	SURAJ BHAN	G - 34	326.58	1257333	1,50,880	14,08,213	1241239	148949	1390188	18025	
20	HARPAL SINGH	G - 100	287.61	1538717	1,84,646	17,23,363	1519021	182283	1701304	22059	
21	MRS. NEERU LOHANI	FC-04	672.75	1765967	2,11,916	19,77,883	1743363	209204	1952566	25317	
22	YOGESH KUMAR	G - 62	325.93	1743729	2,09,247	19,52,976	1721409	206569	1927978	24998	
23	POOJA	G - 24	330.67	1234884	1,48,186	13,83,070	1219077	146289	1365367	17703	
24	PAWAN KUMAR-43	F-106A	302	922761	1,10,731	10,33,492	910950	109314	1020264	13229	
25	HARPAL SINGH SHIVRAN	F - 157	632.28	1881033	2,25,724	21,06,757	1856956	222835	2079790	26966	
26	MONIKA YADAV	F - 129	241.33	320971	38,517	3,59,488	316863	38024	354886	4601	
27	SARVPREET KOHLI	G - 51	328.09	1263031	1,51,564	14,14,595	1246864	149624	1396488	18107	
28	RAJESH KUMAR JAIN	FC-06	578.61	1417598	1,70,112	15,87,710	1399453	167934	1567387	20323	
29	NARESH SAINI	G-55	629.26	2422651	2,90,718	27,13,369	2391641	286997	2678638	34731	
30	MAHABIR KAUSHIK	G-112A	584.49	2674044	3,20,885	29,94,929	2639816	316778	2956594	38335	
31	PAWAN KUMAR	G-66	624.31	3105945	3,72,713	34,78,658	3066189	367943	3434132	44527	
32	SAKSHI DUA	G-76	362.1	1937235	2,32,468	21,69,703	1912438	229493	2141931	27772	
33	AMIT JAIN	G - 112	584.49	2798249	3,35,790	31,34,039	2762431	331492	3093923	40116	
34	VIRENDRA KUMAR SHARMA	G - 60	334.11	1286327	1,54,359	14,40,686	1269862	152383	1422245	18441	
35	NAVEEN NANDAL	F - 112	296.87	1354472	1,62,537	15,17,009	1337135	160456	1497591	19418	
36	AMIT AGARWAL	F - 179	539.06	1603165	1,92,380	17,95,545	1582644	189917	1772562	22983	
37	SAROJ AGARWAL	F - 180	545.09	1621095	1,94,531	18,15,626	1600345	192041	1792386	23240	
38	MONIKA SANTOSH	F - 125	262.21	809445	97,133	9,06,578	799084	95890	894974	11604	
39	MUKESH KUMAR	F - 168	470.17	1906773	2,28,813	21,35,586	1882366	225884	2108250	27335	
40	AJAY KUMAR AGARWAL	F - 136	479	2055823	2,46,699	23,02,522	2029509	243541	2273050	29472	
41	SATIN RAINA	F - 144	367.27	1122191	1,34,663	12,56,854	1107827	132939	1240766	16088	
42	DHEERAJ KHANNA	F - 187	544.66	2157397	2,58,888	24,16,285	2129782	255574	2385356	30928	
43	SADHANA GAHLAUT	F - 133	279.22	864857	1,03,783	9,68,640	853787	102454	956241	12399	
44	SNEH LATA AGNIHOTRI	F - 122	258.77	769839	92,381	8,62,220	759985	91198	851183	11036	
45	KULDEEP TYAGI	F - 110	291.06	1177337	1,41,280	13,18,617	1162267	139472	1301739	16878	
46	JAYA SHARMA	F - 117	320.98	1467280	1,76,074	16,43,354	1448499	173820	1622319	21035	
47	VARUN BHARDWAJ	F - 113	289.55	1319048	1,58,286	14,77,334	1302164	156260	1458424	18910	
48	DEEPESH AGGARWAL	F - 118	309.36	954996	1,14,600	10,69,596	942772	113133	1055905	13691	
49	PRADEEP KUMAR GUPTA	F - 116	304.62	1378102	1,65,372	15,43,474	1360462	163255	1523718	19756	
50	UMESH GUPTA	cancelled	N/A	1342813				0	0	0	Cancelled

51	SARABJIT SINGH	G - 7	449.72	1697693	2,03,723	19,01,416	1675963	201116	1877078	24338	
52	MAHENDRA KUMAR NAREDI	G - 18	403	2282394	2,73,887	25,56,281	2253179	270382	2523561	32720	
53	GAURAV MALHOTRA	G - 21	241.54	1162653	1,39,518	13,02,171	1147771	137733	1285504	16668	
54	JAI KISHAN PAWAR	F - 130	280.94	840714	1,00,886	9,41,600	829953	99594	929547	12052	
55	SUNITA PAWAR	F - 107	317.97	1058428	1,27,011	11,85,440	1044880	125386	1170266	15174	
56	SHWETA SINGH	F - 171	430.13	1771491	2,12,579	19,84,070	1748816	209858	1958674	25396	
57	KARAMVIR SANGWAN	F - 123	275.77	842618	1,01,114	9,43,732	831832	99820	931652	12080	
58	SANDEEP SAMPLA	F - 170	470.17	1804043	2,16,485	20,20,528	1780951	213714	1994665	25863	
59	SAROJ RATHI	F - 132	279.22	879543	1,05,545	9,85,088	868285	104194	972479	12609	
60	SANDEEP ARYA	F - 111	275.34	1113695	1,33,643	12,47,338	1099440	131933	1231372	15966	
61	INTERCON FINLEASE PRIVATE LIMITED	F - 119	300.96	900620	1,08,074	10,08,694	889092	106691	995783	12911	
62	NAVIN GULATI HUF	F - 138	310.43	1394608	1,67,353	15,61,961	1376757	165211	1541968	19993	
63	MUKESH SHARMA	F - 145	263.93	579656	69,559	6,49,215	572236	68668	640905	8310	
64	AJAY KUMAR SANCHETI	G - 43	322.27	1437002	1,72,440	16,09,442	1418608	170233	1588841	20601	
65	SUMEDH GUPTA	G - 115	252.95	1097803	1,31,736	12,29,539	1083751	130050	1213801	15738	
66	ASHOK SUR	F - 115	293	899878	1,07,985	10,07,863	888360	106603	994963	12901	
67	RITU YADAV	G - 101	528.51	2338658	2,80,639	26,19,297	2308723	277047	2585770	33527	
68	RINKLE SINGHAL	G - 27	330.89	1505553	1,80,666	16,86,219	1486282	178354	1664636	21584	
69	AJIT KUMAR	F - 127	257.04	785386	94,246	8,79,632	775333	93040	868373	11259	
70	SANJEEV KUMAR SINDWANI	F - 160	558.65	1857611	2,22,913	20,80,524	1833834	220060	2053894	26631	
71	SHAILENDER GODARA	G - 85	238.75	1259647	1,51,158	14,10,805	1243524	149223	1392746	18058	
72	SHAILENDER GODARA	G - 82	532.17	3087117	3,70,454	34,57,571	3047602	365712	3413314	44257	
73	HARVINDER PAL SINGH	F - 159	550.69	1831144	2,19,737	20,50,881	1807705	216925	2024630	26251	
74	PREM PRAKASH	F - 175	408.6	1533681	1,84,042	17,17,723	1514050	181686	1695736	21987	
75	RAJIV GULATI HUF	F - 173	429.91	1931374	2,31,765	21,63,139	1906652	228798	2135451	27688	
76	MANIK PAHWA	G - 109	267.81	1827136	2,19,256	20,46,392	1803749	216450	2020198	26194	
77	CHETAN JAGGI	G - 121	981.89	4380566	5,25,668	49,06,234	4324495	518939	4843435	62800	
78	MANISH GULATI HUF	F - 135	489.55	1985373	2,38,245	22,23,618	1959960	235195	2195155	28462	
79	TEJINDER KAUR	F - 177	459.19	1747445	2,09,693	19,57,138	1725078	207009	1932087	25051	
80	CHETAN JAGGI	G - 122	457.25	2003322	2,40,399	22,43,721	1977679	237322	2215001	28720	
81	CHETAN JAGGI	G - 123	432.93	2209116	2,65,094	24,74,209	2180839	261701	2442540	31670	
82	NISHA SHISHODIA	F - 181	245.63	429856	51,583	4,81,439	424354	50922	475276	6162	
83	VARUN ARORA	F - 183	345.31	1033340	1,24,001	11,57,341	1020113	122414	1142527	14814	
84	DR. MOHIT KHIRBAT	G - 22	241.54	1069595	1,28,351	11,97,947	1055905	126709	1182613	15334	
85	PRAHLAD SINGH	F - 124	255.75	789502	94,740	8,84,242	779396	93528	872924	11318	
86	GAJENDRA SINGH	F - 192	370.5	1111964	1,33,436	12,45,400	1097731	131728	1229459	15941	
87	DINESH CHAND SHARMA	cancelled	N/A	3475776				0	0	0	Cancelled
88	SANDEEP SINGH RANDHAWA	SA17-19	900	1657090	1,98,851	18,55,941	1635879	196306	1832185	23756	
89	JANAK DEVI	F - 166	429.7	1742648	2,09,118	19,51,766	1720342	206441	1926783	24983	
90	SHEETAL AGARWAL	G - 86	546.17	1156512	1,38,781	12,95,293	1141709	137005	1278714	16580	
91	ANURAG	SA16-12	700	450000			444240	53309	497549	6451	

	GARG				54,000	5,04,000					
92	RAJ RANI	F - 197	384.49	1174810	1,40,977	13,15,787	1159772	139173	1298945	16842	
93	SURINDER KUMAR SHARMA	G - 45	322.27	1422337	1,70,680	15,93,017	1404131	168496	1572627	20391	
94	HEMALI SHARMA	G - 116	252.95	1093379	1,31,205	12,24,584	1079384	129526	1208910	15675	
95	DEEWAN SINGH	G - 16	327.23	1873390	2,24,807	20,98,197	1849411	221929	2071340	26857	
96	AMRINDER KAUR BAJAJ	R-04	1552.38	2472162	2,96,659	27,68,821	2440518	292862	2733381	35441	
Total				15,56,03,708	1,80,94,214	16,88,79,334	14,88,55,070	1,78,62,608	16,67,17,679	21,61,655	

The DGAP has informed that Respondent No. 1 has supplied the construction services in the State of Haryana only.

12. The DGAP has reported that the aforesaid quantification of profiteering has been done for the 94 buyers who had made payments during the post-GST period. The Applicant No. 1's unit had been cancelled as per the home buyer list and the amount had been refunded to the above Applicant and there was no benefit of input tax credit that could be passed on to the above Applicant. Also, this profiteered amount did not include the profiteering with respect to those buyers who had not made any payment during the period July 2017 to August 2019, i.e., the period covered by investigation and the buyers of the area which was to be earmarked for the Respondent No. 3 and the Respondent No. 2 i.e. 35% of the FAR. The benefit of the input tax credit in respect of such buyers would have to be determined when these buyers make payments in the post-GST period, by taking into account the net benefit of the additional input tax credit.

13. Consequently, the DGAP has observed that the benefit of the input tax credit of 1.28% of the turnover has accrued to Respondent No. 1, and the same was required to be passed on to the eligible recipients. Thus, Respondent No. 1 has contravened the provisions of Section 171 of the Central Goods and Services Tax Act, 2017, in as much as

the additional benefit of input tax credit @1.28% of the turnover (base price) received by Respondent No. 1 during the period 01.07.2017 to 31.08.2019, has not been passed on to the recipients. As Applicant No. 1's unit had been cancelled as per the home buyers' list and the amount had been refunded to the above Applicant, there was no benefit of input tax credit that could be passed on to the above Applicant. However, Respondent No. 1 has realized an excess amount of Rs. 21,61,655/- (Rs. Twenty One lakh Sixty One Thousand Six Hundred Fifty only) which included both the profiteered amount @1.28% of the turnover (base price) and GST on the said profiteered amount, from other recipients who were not Applicants in the present proceedings. These recipients were identifiable as per the documents provided by Respondent No. 1, giving the names and addresses along with unit no. allotted to such recipients. Therefore, this amount of Rs. 21,61,655/- (Rs. Twenty One lakh Sixty One Thousand Six Hundred Fifty only) was required to be returned to such eligible recipients. The DGAP has also intimated that the present investigation covered the period from 01.07.2017 to 31.08.2019. Profiteering, if any, for the period post-August 2019, has not been examined as the exact quantum of input tax credit that would be available to Respondent No. 1 in the future could not be determined at this stage, when the construction of the project was yet to be completed.

14. The above Report was considered by the Authority in its meeting held on 20.04.2020 and it was decided that the Applicants and Respondent No. 1 be asked to appear before the Authority on 29.05.2020. A Notice dated 01.05.2020 was also issued to the above

Respondent asking him to explain why the Report dated 23.03.2020 furnished by the DGAP should not be accepted and his liability for violating the provisions of Section 171 of the above Act should not be fixed. The hearing was held on 31.08.2020 via video conferencing. Sh. Aseem Mehrotra, Advocate, and Ms. Ambika Singh, Chartered Accountant, represented Respondent No. 1 while Sh. Prabhat Kumar, Applicant No. 1 was present in person. Sh. Rana Ashok Rajneesh, Assistant Commissioner appeared on behalf of the DGAP. The Applicant No. 1 vide his submissions dated 22.06.2020 and 30.08.2020 has interalia pleaded that:-

- i. The Applicant No. 1's shop No. G-124 was wrongly cancelled by Respondent No. 1 on 11.06.2019 during the pendency of Appeal No. 162/2019 before Haryana Real Estate Appellate Tribunal which was thereafter challenged in the Haryana Real Estate Regulatory Authority (HRERA), Gurugram vide Complaint No. RERA-GRG-3898-2019, titled as Prabhat Kumar Vs Mascot Buidcon Pvt. Ltd. and Hometown Properties Pvt. Ltd. on 27.08.2019. The above fact was also submitted in his reply dated 03.01.2020 to the DGAP. Thereafter, the wrongful cancellation was stayed by the HRERA vide order dated 06.09.2019, which has been enclosed as evidence. Applicant No. 1 has also contended that the above complaint was filed for the restoration of the unit, which was later restored by the HRERA vide order dated 05.03.2020. The above Applicant has submitted a copy of the order dated 05.03.2020 as evidence. Accordingly, in compliance with the above order all installments demanded by Respondent No. 1 to date were paid by Applicant No. 1 which were inclusive of

the amount refunded upon cancellation along with all demands raised post the GST law was implemented, which were raised at 12% GST rate, that was Rs. 58,98,719/- (Rs. 54,50,000/- plus the amount of Rs. 4,48,719/- which was forfeited by the Respondent No. 1 when he had cancelled the Applicant No. 1's unit earlier) was paid against the total demands raised till date as per Notice dated 04.09.2018 which has been enclosed as evidence. Bank transaction details from 21.03.2020 to 27.03.2020 for the sum of Rs. 54,50,000/- paid to Respondent No. 1 as per the above order have also been enclosed as evidence.

- ii. The Applicant No. 1 has also stated that other than the impugned project, one more commercial project namely '83 Avenue' in Sector-83, Gurugram (which was adjacent to the Oodles Skywalk) has been licensed to Sh. Dharam Singh, the Respondent No. 3, and the Real Town Properties Pvt. Ltd. by the Town and Country Planning Department, Haryana. A copy of the letter dated 31.10.2018 and Order dated 31.10.2018 issued to Respondent No. 3 and the Real Town Properties Pvt. Ltd. in respect of License No. 12 of 2013 dated 13.03.2013 from the Directorate of Town and Country Planning, Haryana has been enclosed as evidence. Applicant No. 1 has also submitted that Respondent No. 1 and 2 were under the same directorship, the common directors being Mr. Ashok Gupta and Mr. Ramdhari Gupta. Also, details of various companies that were operating under the directorship of Mr. Ashok Gupta and Mr. Ramdhari Gupta have been enclosed as evidence.
- iii. At this stage, when the proceedings were pending before this Authority, therefore, the payments made by Applicant No. 1 after

the restoration of the shop in the subject project has to be factored while computing the profiteering and refusing this would lead to injustice and multiple litigation/complaint.

15. Respondent No. 1 has filed written submissions dated 16.07.2020 whereby he has submitted various issues which have been briefly stated below:-

- a) That Section 171 CGST Act and Rule 126 of the CGST Rules were violative of Articles 14 and 19 of the Constitution.
- b) That investigation proceedings for the period from September 2018 to August 2019 were without jurisdiction.
- c) That the allegation/finding of 'profiteering' against Respondent No. 1, as also quantification thereof, was premature.
- d) That the basis adopted for determination and quantification of the 'profiteering' alleged in respect of Respondent No. 1, was erroneous.

16. The DGAP in his supplementary Reports dated 21.07.2020, 10.08.2020, 11.09.2020 and clarificatory Report dated 28.10.2020 has interalia submitted:-

- i. That the current investigation covered the period from 01.07.2017 to 31.08.2019 during which the Applicant No. 1's unit stood cancelled and the Applicant No. 1 had challenged the cancellation on 27.08.2019 before the HRERA, Gurugram which was stayed by the HRERA vide Order date 06.09.2019 and later on HRERA ordered its restoration vide order dated 05.03.2020. Accordingly, Applicant No. 1 has made all the payments from 21.03.2020 to 27.03.2020 which was beyond the current investigation period. Based on these facts, Applicant No. 1's unit

has been considered as cancelled unit in the Report dated 23.03.2020. However, further allotment of any unit or any payment received after 31.08.2019 has not been considered. Moreover, it was pertinent to mention here that the above Applicant has made payments to Respondent No. 1 from 21.03.2020 to 27.03.2020 whereas; the Report was submitted on 23.03.2020.

- ii. That during this period, the above Applicant was well aware of the status of his unit as the restoring order was passed on 05.03.2020 by the HRERA but the above Applicant had failed to submit this fact before the DGAP before submission of the Report dated 23.03.2020.
- iii. That since the only supplier of the service was Respondent No. 1 and he had availed the entire ITC in respect of the project "Oodles Skywalk", therefore, there was no need to involve other stakeholders in the investigation. Further, Respondent No. 2 has not provided service and no ITC has been availed by him, therefore, no documents/information was sought from him in terms of Section 171 of the CGST Act, 2017.
- iv. That the Respondent No. 3, vide his letter dated nil has intimated that he had not received his share of 22% of the developed area in the said project from the Respondent No. 1 till date. The landowner had also submitted copies of two Agreements. The first agreement was the Collaboration/ Development Agreement executed between him and Respondent No. 2 (Original Developer) on 29.10.2010 wherein Respondent No. 2 had agreed to allocate 22% of the saleable area of the project to the

landowner. The second agreement was an Agreement of Assignment of Development Rights executed on 09.07.2014 between Respondent No. 2 and 1 wherein Respondent No. 1 agreed to deliver 35% of the saleable area (including 22% share of the landowner) to the original developer within a period of 42 months from the date of commencement of the project. However, the DGAP has observed from the HRERA's website that the time limit for completion of the project has been extended up to 31.12.2020. Therefore, based on the above submissions of Respondent No. 1 and Respondent No. 3, no documents/data and information was sought from Respondent No. 2 and 3.

- v. That the total number of Apartments/Shops in the project "Oodles Skywalk" was 470, out of which only 199 units were sold and 271 units were yet to be sold/booked. Therefore, the DGAP had inferred that the units to be earmarked for the landowner and M/s Home Town Property Pvt. Ltd. were yet to be sold. Moreover, the project was yet to be completed. Hence, no profiteering could be established on the part of the other two stakeholders.

17. We have carefully considered the Reports furnished by the DGAP, the contentions of the Respondents, and the other material placed on record. At the outset, we observe that the present case was referred back to the DGAP for re-investigation under Rule 133 (4) of the CGST Rules, 2017 and recomputation of the quantum of profiteering after considering all the case records and especially the fresh averments/documents/information received from the various parties in the case during the proceedings held before this Authority. We had

observed the need to take into consideration that there were three stakeholders in the project namely (1) M/s Mascot Buildcon Pvt. Ltd., (2) M/s Home Town Properties Private Limited, and (3) Sh. Dharam Singh holding 65%, 13% & 22% share in the sanctioned Floor Area Ratio (FAR), respectively. This Authority had ordered reinvestigation since this fact as also certain other facts/averments and information was not known to the DGAP at the time of the investigation. Subsequently, the DGAP has furnished his Report dated 23.03.2020 after re-investigating the matter. Further, the DGAP has also furnished his further clarificatory Report dated 28.10.2020 wherein he has reported that Sh. Dharam Singh, the landowner i.e. the Respondent No. 3 submitted before the DGAP that he has not received his share of 22% of the developed area in the present project from the developer to date. The landowner has also submitted the copies of two Agreements; the first agreement being a Collaboration Development Agreement dated 29.10.2020 executed between Sh. Dharam Singh, the landowner (Respondent No. 3) and Home Town Property Pvt. Ltd., the Original Developer (Respondent No. 2) whereby the original developer had agreed to allocate 22% of the saleable area of the project to the landowner i.e. Respondent No. 3; the second agreement submitted was an agreement of Assignment of Development Rights executed on 09.07.2014 between M/s Home Town Property Pvt. Ltd. (Respondent No. 2) and M/s Mascot Buildcon Pvt. Ltd. (Assignee Developer or Respondent No. 1) wherein the assignee developer (Respondent No. 1) had agreed to deliver 35% of the total saleable area (including 22% share of the landowner, Respondent No. 3) to the original developer, Respondent

No. 2 within a period of 42 months from the date of commencement of the project. However, the said project has not yet been completed. During the investigation, the DGAP has sieved through the website of the Haryana Real Estate Regulatory Authority (RERA) and observed that the time limit for the completion of the project has been extended by the Haryana RERA up to 31.12.2020. The DGAP has further found that the total number of Apartments/Shops in the said project "Oodles Skywalk" was 470, out of which only 199 units had been sold and that 271 units were yet to be sold/booked. Therefore, the DGAP has inferred that the units to be earmarked for the landowner, Respondent No. 3 and M/s Home Town Property Pvt. Ltd., Respondent No. 2 had not been sold to date. The DGAP vide his Report dated 23.03.2020 has reported that while the said project had not yet been completed, the Respondent No. 1 had submitted before the DGAP that the supply of construction service agreed to be provided by the Respondent No. 1 in respect of 35% share in the project which was the total share of the Respondent No. 2 and the Respondent No. 3 as per the agreement executed between him and the Respondent No. 2, however, has not yet been effected since the same could be considered complete only after he handed over the possession and after the execution of the conveyance deed between him (Respondent No. 1) and Respondent No. 2 and Respondent No. 3. Thus, the DGAP has concluded that in absence of any supply having been effected as yet, the provisions of Section 171 of the CGST Act, 2017 did not stand attracted and no profiteering could be alleged in respect of the said 35% share of Respondent Nos. 2 and 3. Therefore, the DGAP has reported that based on the above-

mentioned submissions, no document data and information was sought from Respondent No. 2 and Respondent No. 3 at the stage of the reinvestigation of the case. We, however, observe that if there were no units/flats/apartments allocated or demarcated between the three Respondents as per agreements executed among the Respondents, then the DGAP could not have concluded that no area had been sold from within the share of the other two stakeholders i.e. Respondent No. 2 and Respondent No. 3. Therefore, it appears that the above finding of the DGAP was based on mere speculation since no valid reason/ground has been spelled out by the DGAP on this issue in his Report dated 23.03.2020. We find the need for investigating this issue further as the same is required for computation of the amount of profiteering pertaining to all the three Respondents as per their share in the project.

18. Moreover, the agreement between Respondent No. 2 and Respondent No. 3 in para 8 states that Respondent No. 3 would be at liberty to earmark his entitlement of 22% sanctioned FAR in the proposed project in one consolidated block being his share from the total area. Respondent No. 2, the developer would be at liberty to launch the project and sell the units/ apartments at any stage leaving the earmarked area of Respondent No. 3's allocation. Vide para 12 of the above agreement it has been stated that if Respondent No. 3 wished to sell any part of his allocation before being handed over the possession of his share in the property upon development, Respondent No. 3 would issue written authority to the Respondent No. 2 who would sell the Respondent No. 3's share and the collected sale proceeds should be transferred to the Respondent No. 3 by

Respondent No. 2. We observe that the above facts should be examined thoroughly by the DGAP while investigating the matter further while calculating the share of profiteering by Respondent No. 3 in terms of his share in the project.

19. Further, during the proceedings before this Authority, we find that Applicant No. 1 has also submitted that in addition to the impugned project, one more commercial project in the name and style of '83 Avenue' at Sector-83, Gurugram (adjacent to the project 'Oodles Skywalk') has also been licensed to Respondent No. 3 (Sh. Dharam Singh) and Real Town Properties Pvt. Ltd. by the Town and Country Planning Department, Haryana. Therefore, it appears that Respondent No. 3 is also involved in other construction activities/projects in the state of Haryana and may have a valid GSTIN Registration; which also needs to be considered during the investigation proceedings. We also observe the need to scrutinize the records of Respondent No. 2 and 3 on similar lines since both the Respondents would have been submitting their statutory GST Returns and availing ITC. Here we observe that the interest of justice would be served only if all the stakeholders in the project i.e. Respondents Nos. 1, 2, and 3 are investigated w.r.t. their GSTRs clearly reflecting their share of profiteering duly reflected in their ITC heads.

20. We also take note of the fact that the subject project has not yet been completed and the completion/occupancy certificate has not yet been issued in respect of the project. Keeping the same in mind and the fact that the unit booked by Applicant No. 1 has now been restored vide RERA order dated 05.03.2020 after it had been

cancelled by Respondent No. 1 and since Applicant No. 1 has already made all the payments in respect of the flat/unit booked by him in March 2020, we find it apt to extend the period of current investigation up to 31.10.2020 as this extension will help in delivering justice to the above Applicant as also other such Applicants who would have become eligible for receiving the benefit of ITC.

21. Therefore, this Authority hereby directs the DGAP to re-investigate the matter under Rule 133 (4) of the CGST Rules, 2017 on the following lines:-

- i. The DGAP to verify whether the landowner i.e. the Respondent No. 3 and the original developer i.e. the Respondent No. 2 have received their share of shops/flats from the assignee developer i.e. the Respondent No. 1 as per para 8 and 11 of the agreement.
- ii. The DGAP requires to corroborate from the Haryana RERA and the Town and Country Planning Department, Haryana whether any shop/flat allocation in respect of the share of all stakeholders has taken place or not.
- iii. The DGAP needs to further ascertain whether Respondent No. 2 and 3, have sold their share of shops/flats in the impugned project or not.
- iv. Respondent No. 1 has stated that no supply has been made by him to the other Respondents. The DGAP is required to verify whether the service has been effected to the other two Respondents as per the Agreement and in accordance with the CGST Act, 2017. The DGAP also needs to investigate the authenticity of the above statement and furnish his findings on the same.

- v. The DGAP is also directed to verify whether there were other projects under the same registration. On confirmation, the DGAP may investigate the same as per the provisions of Section 171 (2) of the CGST Act, 2017.
- vi. The DGAP needs to ascertain whether the other two stakeholders have got separate GSTIN registration. On verification, the DGAP needs to investigate them in terms of Rule 133(5) of the CGST Rules, 2017.

22. This Authority also observes that there are certain other factual errors/anomalies in the DGAP's Report dated 23.03.2020 which need to be verified by the DGAP:-

- i. In Table 'A' of his Report, the DGAP has considered the aggregate of the 'amounts received' for the pre-GST period from 01.04.2016 to 30.06.2017 whereas the DGAP has considered the aggregate of the 'demands raised' for working out the turnover for the post-GST period from 01.07.2017 to 31.08.2019 for the quantification of profiteering.
- ii. The total turnover reflected in the statutory returns of the Respondent for the pre-GST period from April 2016 to June 2017 is Rs. 6,65,51,445/-. However, the DGAP has considered a turnover of Rs. 9,65,21,340/- as per Table 'A' of his Report for the very same pre-GST period from April 2016 to June 2017.
- iii. Similarly, the turnover recorded in the GSTR-3B Returns of the Respondent for the period from July 2017 to August 2019 is Rs. 12,32,80,590/-. However, the DGAP has considered a turnover of Rs. 15,56,03,708/- as per Table 'A' of his Report for the same post-GST period from July 2017 to August 2019.

- iv. The DGAP has considered turnover as Rs. 9,65,21,340/- for the pre-GST period from 01.04.2016 to 30.06.2017. However, as per Annexure-16 of his Report, the amount received was found to be Rs. 9,65,29,210/- for the pre-GST period from 01.04.2016 to 30.06.2017.
- v. The DGAP has taken the period from 01.07.2017 to 31.08.2019 for post-GST consideration of the turnover and sold area in Table 'A' of his Report. However, in Annexure-16, the period has been shown as from 01.07.2017 to 30.11.2019.
- vi. The DGAP has considered 89,258 sq. ft. as the total area sold in the post-GST period from 01.07.2017 to 31.08.2019 for the computation of profiteering. However, Area sold is 39,587.54 sq. ft. for the post-GST period from 01.07.2017 to 31.08.2019 as per Table-C of his Report.
- vii. Area sold as 90,170.73 sq. ft. has been considered by DGAP in Table 'A' of his Report for the pre-GST period from 01.04.2016 to 30.06.2017. However, as per Annexure-16 to the DGAP's Report, the Area sold works out to 48,624.03 sq. ft. for the same period.

23. The abovesaid apparent anomalies in the Reports of the DGAP need to be appropriately addressed by way of revisiting the investigation in the interest of justice. Since there are differences in the figures considered for computation of the profiteering amount, thorough verification of the figures is required while re-investigating the matter. Hence, without dwelling upon any other aspect of the case and without going into any contentions of the Respondents and

the Applicants, this Authority, under the powers conferred on it vide Rule 133(4) of the CGST Rules read with Section 171 of the CGST Act 2017, directs the DGAP to reinvestigate this case and recompute the quantum of profiteering based on above findings. While reinvestigating the matter on the above lines, all other contentions made by Respondent before this Authority during the course of the hearings may also be considered.

24. The DGAP shall submit his Report after reinvestigation on the above lines expeditiously. The Respondents are directed to extend all necessary assistance to the DGAP and furnish him with necessary documents or information as required during the course of the investigation.

25. 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 16.04.2020 the order was to be passed on or before 15.10.2020. 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 was 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.

26. A copy of this order be supplied to all the parties and file of the case
be consigned after completion.

Sd/-
(Dr. B. N. Sharma)
Chairman

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

Sd/-
(Amand Shah)
Technical Member

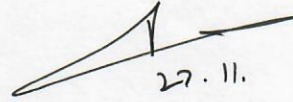
Certified copy


(A.K. Goel)
Secretary, NAA

File No. 22011/NAA/14/Mascot/2019 /6248-6252 Dated: 27.11.2020

Copy for information & necessary action to:

1. Directorate General of Anti-Profitteering, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, New Delhi-110001.
2. M/s Mascot Buildcon Pvt. Ltd., 294/1, Vishwa Karma Colony, New Delhi-110044.
3. M/s Home Town Properties Private Limited, 85-86- Manglapuri, Gurgaon-Mehrauli Road, New Delhi-110044.
4. Sh. Dharam Singh S/o Shis Ram, H. No. 2/E, Village-Lakhnola, Tehsil & District-Gurgaon, Haryana- 122004.
5. Sh. Prabhat Kumar, 39-AB, Tagore Garden, Ambala Cantt, Haryana-133001.
6. Guard File/NAA Website.


27.11.