

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

Case No. 08/2022
Date of Institution 16.04.2020
Date of Order 12.05.2022

In the matter of:

1. Shri Hemant Kumar Gupta, F-61, Nivedita Kunj, Sector-X, R.K. Puram, New Delhi.
2. Director General of Anti-Profiteering, Central Board of Indirect Taxes & Customs, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.

Applicants

Versus

M/s Dreamhome Infrastructures Pvt. Ltd., 101, Tower D, Global Business Park, Mehrauli-Gurgaon Road, Gurgaon-122022

Respondent

Quorum:-

1. Sh. Amand Shah, Chairman and Technical Member
2. Sh. Pramod Kumar Singh, Technical Member
3. Sh. Hitesh Shah, Technical Member



ORDER

1. The present Report dated 23.03.2020, had been received from the Applicant no. 2 i.e. the Director General of Anti-Profiteering (DGAP) after a detailed investigation under Rule 129 of the Central Goods & Service Tax (CGST) Rules, 2017. The brief fact of the case was that a reference was received from the Standing Committee on Anti-profiteering to conduct a detailed investigation in respect of an application filed by the Applicant No. 1, alleging profiteering in respect of construction service supplied by the Respondent. The Applicant No.1 submitted that he had purchased flat no. D-203 in the Respondent's project "**Heritage Max**", Dwarka Expressway, Sector-102, Gurugram-122022 and had alleged that the Respondent had not passed on the benefit of ITC to him by way of commensurate reduction in price. As mentioned in the application, the Applicant no. 1 had lodged the complaint with the Haryana State Screening Committee which had sent it to the standing committee after satisfying itself in initial scrutiny. The said reference was examined by the Standing Committee on Anti-profiteering, in its meeting held on 15.05.2019, the minutes of which were received by the DGAP on 28.06.2019, whereby it was decided to forward the same to the DGAP, to conduct a detailed investigation in the matter.
2. The DGAP has submitted that on receipt of the said reference from the Standing Committee on Anti-profiteering, a Notice under Rule 129 of the Rules was issued by the Director General of Anti-profiteering on 10.07.2019, calling upon the Respondent to reply as

to whether he admitted that the benefit of ITC had not been passed on to the Applicant no. 1 by way of commensurate reduction in price and if so, to *suo moto* determine the quantum thereof and indicate the same in his reply to the Notice as well as furnish all supporting documents. Vide the said Notice, the Respondent was also afforded an opportunity to inspect the non-confidential evidences/information submitted by the said Applicant no. 1 during the period 18.07.2019 to 22.07.2019, which the Respondent did not avail of.

3. The period covered by the current investigation was from 01.07.2017 to 30.06.2019. The time limit to complete the investigation was extended up to 26.03.2020 by this Authority vide order dated 24.12.2019, in terms of Rule 129(6) of the Rules.

4. The DGAP had submitted that in response to the Notice dated 10.07.2019 and subsequent reminders dated 14.08.2019, 20.09.2019 and 07.10.2019, the Respondent submitted his reply vide letters/e-mails dated 24.07.2019, 20.08.2019, 16.09.2019, 25.09.2019, 10.10.2019, 24.10.2019, 08.11.2019, 13.11.2019, 06.12.2019, 17.12.2019, 23.01.2020, 14.02.2020 and 06.03.2020

The reply of the Respondent have been summed up as follows:

(a) The Respondent vide his letter dated 10.10.2019 submitted that, only a demand of Rs. 87 Cr in respect of the units sold up to 30.06.2017 was raised in the GST regime and that the balance amount had already been demanded from the customers in the pre GST regime.

(b) The Respondent vide his submissions dated 10.10.2019 submitted that the extent of the ITC availed him was insufficient to offset the increase in costs that had to be incurred due to implementation of GST.

(c) The Respondent vide his submission dated 10.10.2019 submitted that in the pre GST regime the taxes paid on services were available as credit which was already considered while determining the price of the unit. Thus, GST credit on services did not result in any additional benefit to him.

(d) The Respondent vide his submissions dated 10.10.2019 submitted that he had passed on substantial amount of ITC benefit to the customers in accordance with the requirements of Section 171 of CGST Act, 2017 at the time of offer of possession to customers.

(e) Further, the Respondent vide his submissions dated 23.01.2020 claimed that the benefit of ITC of Rs. 3,70,88,000/- was passed on to the customers. He had submitted the Journal Vouchers (JV) along with invoices issued to the customers as supporting documents against his claim.

5. Further, the DGAP had stated that vide the aforementioned letters/e-mails, the Respondent submitted the following documents/information:

- (a) Copies of GSTR-1 returns for the period July, 2017 to June, 2019.
- (b) Copies of GSTR-3B returns for the period July, 2017 to June, 2019.
- (c) Copies of Tran-1 filed.

- (d) Electronic Credit Ledger for the period July, 2017 to June 30, 2019.
- (e) Copies of VAT& ST-3 returns for the period April, 2016 to June, 2017.
- (f) Copies of all demand letters, sale agreement/contract issued in the name of the Applicants.
- (g) Details of applicable taxes pre-GST and post-GST.
- (h) Copy of Balance Sheet and Cost Audit Report for FYs. 2016-17, 2017-18.
- (i) Details of VAT, Service Tax, ITC of VAT, CENVAT Credit for the period April, 2016 to June, 2017, Output GST and ITC for the period July, 2017 to June, 2019 for the impugned Project.
- (j) CENVAT/Input Tax Credit Ledger for the FY 2016-17, 2017-18 and 2018-19 reconciled with VAT, ST-3 and GSTR-3B returns.
- (k) List of home-buyers for the impugned Project.
6. The DGAP also stated that the Respondent did not claim confidentiality of any of the details/information furnished by him, in terms of Rule 130 of the Rules. The DGAP had further submitted that vide e-mail dated 02.03.2020, the Applicant no. 1 was also afforded an opportunity to inspect the non-confidential documents/reply furnished by the Respondent on 03.03.2020 or 04.03.2020, which the Applicant no. 1 did not avail of.
7. The DGAP in his report has mentioned that the subject application, the various replies of the Respondent and the documents/evidence on record had been examined by him. The main issues to be examined were whether there was reduction in rate of tax or benefit of ITC on the supply of construction service by the Respondent

after implementation of GST w.e.f. 01.07.2017 and if so, whether the Respondent passed on such benefit to the recipients by way of commensurate reduction in prices, in terms of Section 171 of the CGST Act, 2017.

8. The DGAP stated that the Respondent vide his submissions dated 10.10.2019 submitted that only a demand of Rs. 87 Cr. in respect of the units sold up to 30.06.2017 was raised in the GST regime and that the balance amount had already been called up in the pre-GST regime. In this context, the Respondent vide his submissions dated 23.01.2020 to the DGAP had submitted Buyers' Agreements and Home Buyers List of such demand for clarification. On examination of the Home Buyers List, it was observed that the amount of Rs. 98,69,44,454 /- was raised in post GST period. However, there were 13 units where amount involved was Rs. 10,60,75,892/- which were sold after 01.07.2017. Further, on-going through the clause 2.11 of Buyers' Agreements submitted by the Respondent, the DGAP had concluded that he had sold 13 flats at the rates agreed by the customers as all-inclusive price after considering GST ITC benefit and the price so fixed was mutually negotiated & agreed upon as per clause 2.11 of Buyers Agreement. In the light of the above-mentioned factor, the DGAP had submitted that the demand of Rs 88.09 Cr (Rs. 98.69 Crores - Rs. 10.60 Cr) raised as per Buyer's list might be taken into account in respect of the units sold up to 30.06.2017.

9. The DGAP also observed that prior to 01.07.2017, i.e., before GST was introduced, the Respondent was eligible to avail CENVAT

credit of Service Tax paid on the input services. However, CENVAT credit of Central Excise Duty paid on the inputs was not admissible as per the CENVAT Credit Rules, 2004, which were in force at the material time.

10. The DGAP had also submitted that it would be pertinent to refer to Para 5 of Schedule-III of the CGST Act, 2017 (Activities or Transactions which should be treated neither as a supply of goods nor a supply of services) which reads as "*Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building*" along with clause (b) of Paragraph 5 of Schedule II of the CGST Act, 2017 which 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 had been received after issuance of completion certificate, where required, by the competent authority or after his first occupation, whichever was earlier*". Thus, it was apparent to the DGAP that the ITC pertaining to the residential units which were under construction but not sold was provisional ITC which might be required to be reversed by the Respondent, if such units remained unsold at the time of issue of the Completion Certificate, in terms of Section 17(2) & Section 17(3) of the CGST Act, 2017, which read as under:

Section 17 (2) "Where the goods or services or both was 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 exempted supplies

under the said Acts, the amount of credit shall be restricted to so much of the input tax as was attributable to the said taxable supplies including zero-rated supplies”.

Section 17 (3) “The value of exempted supply under sub-section (2) shall be such as might be prescribed and shall include supplies on which the recipient was 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, ITC pertaining to the unsold units was outside the scope of this investigation and the Respondent was required to recalibrate the selling price of such units to be sold to the prospective buyers by considering the proportionate additional ITC available to him post-GST.

11. The DGAP had further claimed that the present case pertains to supply of construction service and the investigation was limited to one project i.e. “Heritage Max” only, in which the Applicant no. 1 had booked his unit no. D-203.
12. The DGAP mentioned that upon analysis of the home-buyers’ data and details of area in Residential Project vide e-mail dated 06.03.2020 submitted by the Respondent, it was observed that the Respondent’s Project “Heritage Max” included different categories of units therein, namely Apartment, Shops and EWS units. The Respondent vide his submissions dated 10.10.2019 submitted CENVAT/Input Tax Credit details for the project “**Heritage Max**”

reconciled with VAT, ST-3 and GSTR-3B returns for the period being covered in this investigation.

13. Further, it was submitted by the DGAP that the Respondent was paying VAT under HVAT under normal scheme and was eligible to avail any ITC of VAT paid on the inputs purchased by him. The Respondent submitted VAT Returns, Ledgers etc. and the breakup of the purchases made for the impugned project to justify the credit of VAT for the impugned project and details of VAT turnover for the project was provided.
14. The DGAP stated that the Respondent had not claimed credit for Rebate of WCT (VAT) paid to registered contractors or sub-contractors claiming credit for the same in pre-GST period. However, the issue was examined in detail and it was observed by the DGAP that there was no deduction claimed on account of payment to work contractors to claim WCT credit for the project in his VAT returns submitted to the DGAP.
15. The DGAP has claimed that on-going through the details submitted vide the Respondent's submissions dated 10.10.2019, it appeared to him that prior to 01.07.2017, i.e., in the pre-GST era, the Respondent was eligible to avail CENVAT credit of Service Tax paid on input services and VAT paid on inputs only (no credit was available in respect of Central Excise Duty paid on inputs). However, post-GST, the Respondent could avail ITC of GST paid on all inputs and input services. From the data submitted by the Respondent, the details of the ITC availed by the Respondent, his

turnover for the project "Heritage Max", and the ratios of ITC to the turnover during the pre-GST (April, 2016 to June, 2017) and the post-GST (July, 2017 to June, 2019) periods, were furnished in table- 'A' below.

S.No.	Particulars	(Pre-GST)	(Post-GST)
1	Credit of Service Tax Paid on Input Services (A)	2,92,60,200	
2	Input Tax Credit of VAT paid on Inputs (B)	93,27,151	
3	Total CENVAT/VAT/Input Tax Credit Available (C=A+B)	3,85,87,351	
4	Input Tax Credit of GST Availed (D)		12,87,16,658
5	Total Turnover from Residential Area (E)	99,16,98,785	98,69,44,454
6	Total Saleable Area (F)	1095951	10,95,951
7	Sold Area relevant to Turnover in Sq Ft. (G)	9,62,776	691459
8	ITC proportionate to Sold Area (H= (C or D)* G/F)	3,38,98,391	8,12,10,101
9	Ratio of CENVAT/Input Tax Credit to Turnover (I=H/E*100)	3.42%	8.23%

16. Further, it was submitted by the DGAP that the ITC as a percentage of the turnover that was available to the Respondent during the pre-GST period (April, 2016 to June, 2017) was 3.42% and during the post-GST period (July, 2017 to June, 2019), it was 8.23%. This confirmed that post-GST, the Respondent had benefited from additional ITC to the tune of 4.81% (8.23% - 3.42%) of the turnover. Accordingly, the profiteering had been examined by comparing the applicable tax and ITC available for the pre-GST period (April, 2016 to June, 2017) when only Service Tax was leviable @4.5% to the post-GST period (July, 2017 to June, 2019) when the effective GST rate was 12% (GST @18% along with 1/3rd abatement for land value) on construction service, vide Notification

No.11/2017-Central Tax (Rate) dated 28.06.2017. On the basis of the figures contained in Table - 'A' above, the comparative figures of the applicable tax rate and ratio of ITC to the turnover in the pre-GST and the post-GST periods as well as the recalibrated base price and the excess realization (profiteering) during the post-GST period, has been tabulated in 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 March, 2019	
2	Output tax rate (%)	B	4.50%	12.00%	
3	Ratio of CENVAT/VAT/GST ITC to Total Turnover as per Table - B above (%)	C	3.42%	8.23%	
4	Increase in ITC availed post-GST (%)	D	-	4.81%	
5	Analysis of Increase in input tax credit:				
6	Total Basic Demand during July, 2017 to June, 2019	E		98,69,44,454	
7	Less the Basic demand booked after 01.07.20217.	F		10,60,75,892	
8	Total Net Basic Demand during July, 2017 to June, 2019	G		88,08,68,562	
9	GST @12%	H= G*12%		10,57,04,227	
10	Total demand	I= G+H		98,65,72,789	
11	Recalibrated Basic Price	J=G*(1-D) or 95.19% of G		83,84,98,784	
12	GST @12%	K=J*12%		10,06,19,854	
13	Commensurate demand price	L=J + K		93,91,18,638	
14	Excess Collection of Demand or Profiteered Amount	L=I - L		4,74,54,151	

17. From Table-'B' above, it was observed by the DGAP that additional ITC of 4.81% of the turnover should have resulted in commensurate reduction in the base price as well as cum-tax price. In terms of Section 171 of the CGST Act, 2017, the benefit of the additional ITC was required to be passed on to the recipients. Whereas, the Respondent had contended that any such benefit would eventually be passed on to the recipients at the time of giving possession of the flats, but as observed earlier, the profiteering had to be determined at a given point of time, in terms

of Rule 129(6) of the Rules. For the present, the Respondent had retained the benefit on account of additional Input Tax Credit. In other words, by not reducing the pre-GST base price by 4.81% on account of additional benefit of ITC and charging GST @12% on the pre-GST base prices, the Respondent appeared to have contravened the provisions of Section 171 of the of the CGST Act, 2017.

18. It was further submitted by the DGAP that the quantification of profiteering or the benefit not passed on by the Respondent, to his recipients, taking into account the aforesaid CENVAT/input tax credit availability pre and post-GST and the details of the amount collected from the home buyers during the period 01.07.2017 to 31.06.2019, the amount of benefit of ITC not passed on to the recipients or in other words, the profiteered amount came to Rs. **4,74,54,151/-** which included 12% GST on the base profiteered amount of Rs. **4,23,69,778/-**. Further, the benefit to be passed on to the Applicant no. 1 worked out to Rs. 1,23,225/- which included both the profiteered amount @ 4.81% of the base price and 12% GST on the said profiteered amount.

19. The DGAP submitted that the Respondent in his submissions dated 10.10.2019, had claimed that he had passed on substantial amount of ITC benefit to the customers in accordance with the requirements of Section 171 of CGST Act, 2017 at the time of offer of possession to customers. Further, the Respondent vide his submission dated 23.01.2020 claimed that the benefit of ITC of Rs. **3,70,88,000/-** had been passed on to the customers. The

Respondent had submitted the Journal Vouchers (JV) along with invoices issued to the customers and Acknowledgment letters (on sample basis) from the customers as supporting documents against his claim which had been verified by the DGAP.

20. The Respondent vide his reply dated 23.01.2020 to the DGAP had also submitted that he had passed on the benefit of Rs. 3,70,88,000/- to 245 home buyers who had booked their flats up to 30.06.2019. A summary of category-wise profiteering & the benefit passed on has been furnished in the Table-'C' below:

Table-'C'

(Amount in Rs.)

S. No.	Category of Customers	No. of Units	Area (in Sqf)	Amount Raised Post GST (July, 2017 to June, 2019)	Profiteering Amt. as per Annex-	Benefit already Passed on by the Respondent	Difference	Remark
A	B	C	D	E	F	G	H=F-G	I
1	Applicant	1	2,149	22,87,367	1,23,225	1,14,000	9,225	Further Benefit to be pass on
2	Other Than Applicant	301	6,61,806	87,31,51,195	4,70,38,401	3,69,74,000	1,00,64,401	Further Benefit to be pass on
3	Other Than Applicant (EWS)	88	17,600	54,30,000	2,92,525	0	2,92,525	EWS unit
4	Other Than Applicant	13	27,504	(10,60,75,892)	0	0	0	As per Clause 2.11 of Buyers Agreement, Flats sold after 01.07.2017 and agreement done after adjusting benefit GST input tax credit
5	Other Than Applicant	147	3,03,130	-	-	-	-	No Consideration raised Post-GST
	Sub Total	550	10,12,189	88,08,68,562	4,74,54,151	3,70,88,000	1,03,66,151	
6	Other Than Applicant	20	43231					Unsold Units as on 30.06.2019
7	Other Than Applicant	20	40,531					Cancelled/other units
	Sub Total	40	83,762					
	Grand Total	590	10,95,951					

21. The DGAP had further submitted that from the above Table "C", the benefit already passed on by the Respondent was lesser than what he should have passed on in 390 cases including the Applicant (Sr. 1,

2 & 3 of above table) amounting to Rs. 1,03,66,151/- (Rs. 9,225/- + Rs.1,00,64,401/- + Rs. 2,92,525/-). The benefit already passed on by the Respondent had been verified by the DGAP with the demand invoices/Journal Voucher submitted by the Respondent. Thus, the total additional amount of Rs. 1,03,66,151/- (Rupees One Crore, Three Lakh, Sixty-Six Thousand, One Hundred and Fifty-one only) was required to be returned to the Applicant no. 1 and such eligible recipients.

22. The DGAP further stated that the above computation of profiteering was in respect to 390 units (302 home buyers + 88 EWS customers) from whom construction value had been received by the Respondent during the period 01.07.2017 to 30.06.2019 (excluding flats sold after 01.07.2017 on which agreement was done after adjusting benefit of GST input tax credit). Whereas, the Respondent had booked 462 flats till 30.06.2019, he had claimed that effective from 01.07.2017, he had sold 13 flats at the rates agreed by the customers as all-inclusive price after considering GST ITC benefit and the prices so fixed were mutually negotiated & agreed upon as per clause 2.11 of Buyers Agreement. The Respondent had also submitted the Agreements executed by him with these 13 home buyers. This argument of the Respondent had merit and therefore, ITC pertaining to the above 13 units was outside the scope of this investigation as the selling prices of such units was negotiated between the home buyers and the Respondent taking into consideration the benefit of ITC or change in GST. Further, out of the remaining 449 flats [(462) - (13)], 147 customers booked the flats in Pre-GST period and also paid amounts

in pre-GST period but they had not paid any consideration towards construction during the post-GST period from 01.07.2017 to 30.06.2019 (period covered by investigation). If ITC in respect of these 147 units was taken into account to calculate profiteering in respect of 302 units where payments towards construction value had been received post-GST, the ITC as a percentage of turnover would be distorted and erroneous. Therefore, the benefit of ITC in respect of these 147 units should be calculated when the consideration towards construction was received from the concerned home buyers, by taking into account the proportionate ITC in respect of such units. On the basis of the details of outward supplies submitted by the Respondent, it was observed that construction service had been supplied by the Respondent in the State of Haryana only.

23. The DGAP had stated that on the basis of above discussion, it appeared to him that post-GST, the benefit of additional ITC of 4.81% of the turnover had accrued to the Respondent for the project "Heritage max". This benefit was required to be passed on to the recipients but this was not done. Section 171 of the CGST Act, 2017 appeared to have been contravened by the Respondent, in as much as the additional benefit of ITC @ 4.81% of the base price received by the Respondent during the period 01.07.2017 to 30.06.2019, had not been passed on by the Respondent to 390 recipients including the Applicant No. 1. 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, the total additional amount of Rs. **1,03,66,151/- (Rupees One Crore,**

Three Lakh, Sixty-Six Thousand, One Hundred and Fifty-One only) was required to be returned to the Applicant No.1 and such eligible recipients. As observed earlier, the Respondent had supplied construction services in the State of Haryana only.

24. As aforementioned, the present investigation by the DGAP covers the period from 01.07.2017 to 30.06.2019. Profiteering, if any, for the period post July, 2019, had not been examined by the DGAP as the exact quantum of ITC that would be available to the Respondent in future cannot be determined at this stage, when the construction of the project was yet to be completed.
25. In view of the aforementioned findings, the DGAP had submitted that the provisions of Section 171(1) of the CGST Act, 2017, requiring that *“any reduction in rate of tax on any supply of goods or services or the benefit of ITC shall be passed on to the recipient by way of commensurate reduction in prices”*, had been contravened by the Respondent in the present case.
26. The above Report was considered by this Authority in its meeting held on 20.04.2020 and it was decided that the Applicant no. 1 and the Respondent be asked to appear before the Authority on 21.05.2020. The Respondent was issued a notice on 05.05.2020 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. However, in the wake of COVID-19 pandemic outbreak and subsequent lockdown in Delhi, the hearing scheduled on 21.05.2020 could not be held. Consequently, the Respondent was directed to submit his consolidated submissions

against the DGAP's Report by 19.06.2020, to which the Respondent, vide his letter dated 15.06.2020, had informed that due to Corona virus pandemic, he could not make his submissions in time and had requested for additional time to file his submissions. Further, the Respondent was granted another opportunity to submit his consolidated submissions by 19.08.2020, to which the Respondent, vide his letter dated 19.08.2020 received on 20.08.2020, has submitted that the Report dated 23.03.2020 furnished by the DGAP, was acceptable to him and ITC benefit determined as per the report would be passed on to all the home buyers. The Respondent's submissions dated 19.08.2020 are reiterated as under:

(a) The bulk of the expenditure on the development of the project had already been incurred in the pre-GST regime i.e. prior to 01.07.2017. In the pre GST regime, the Respondent was not entitled to the benefit of additional CENVAT credit paid on inputs.

(b) The extent of the input tax credit availed by the Respondent was insufficient to offset the increase in costs that had to be incurred due to implementation of GST.

(c) In the pre-GST regime, credit of CENVAT paid on services was already available as credit which was already considered while determining the pricing of the unit. Thus, GST credit on services did not result in any additional benefit to the Respondent.

(d) In the pre-GST regime, Service Tax was payable @15% and in the Post-GST regime, GST was payable @18%. Therefore,

there was increase in tax rate of 3% from pre-GST to the post-GST period. This was not an additional benefit to the Respondent as the tax paid on services was never a part of cost to the Respondent because the same was available as input tax credit in both the regime. Also there was continuous increase in the cost of raw material procured by the Respondent due to market inflation.

(e) The Respondent had already, on his account, passed on an amount of Rs. 3,70,88,000/- as GST Input Tax Credit to customers in accordance with the requirements of Section 171 of the CGST Act, 2017 at the time of offer of possession to customers, documentary proof of which had already been furnished earlier alongwith his letter dated 22.01.2020 and the same was already addressed in the DGAP's report dated 23.03.2020. The Respondent had while passing on the benefit of GST Input Tax Credit to customers, given due consideration to the provisions of Section 171 of the CGST Act and had worked out the amounts accordingly.

(f) The methodology adopted by the DGAP for arriving at the amount of profiteering by the Respondent as per the report dated 23.03.2020, was based on the concept of taxable turnover. The figure of turnover so reported was based on progress made based on milestones achieved for accounting purposes and did not coincide with cash flows / receipt of collections from customers, the timing of which determined the amount of tax to be charged from the customers. To that extent, the comparison of the Input Tax

Credit figure to the reported turnover did not reflect in the actual position. Accordingly, there was an amount of Rs. 1,03,66,151/- worked out as the amount of additional refund that the Respondent needed to refund to the unit allottees as per the DGAP report dated 23.03.2020.

(g) The Respondent had already passed on Rs. 3,70,80,000/- to his customers and the amount of Rs. 1,03,66,151/- of additional refund would be passed on to the customers. The Respondent would submit documentary proof to the Authority as soon as possible.

The Respondent had further submitted that he did not want any further hearing in the matter and also requested an expeditious closure of the proceedings.

27. In continuation of the above, the Respondent vide his letter dated 14.09.2020 has submitted that the Respondent was in process of passing the Input Tax Credit benefit of Rs. 1,03,66,151/- plus interest on it. The Respondent has also submitted the statement of accounts showing the amount of Input Tax Credit and Interest. Further, the Respondent has also submitted intimation letters to customers of ITC & Interest thereto and Credit Notes of passage of the Input Tax Credit benefit with payment proofs.

28. The Respondents submissions *supra*, were supplied to the DGAP vide Order dated 21.09.2020 whereby, the DGAP was directed to file his clarifications under Rule 133(2A) of the CGST Rules, 2017. In response, the DGAP has submitted his interim clarification dated

06.10.2020 received on 07.10.2020 wherein the DGAP had submitted that:

- (a) The Respondent vide his letter had submitted the statement of account, intimation letter to the customers and Credit Notes in support of his claim of passing on the benefit of ITC and interest.
- (b) On verification of the said documents, it was observed by the DGAP that in case of Unit No. F-1102 in the name of Mrs. Kuljit Kaur Dhillon, the Respondent had not submitted any documentary evidence for verification of the benefit passed on and claimed the said unit as cancelled. However, it was pertinent to mention that the said unit did not stand cancelled at the time of submission of DGAP's Investigation Report dated 23.03.2020.
- (c) In case of all other remaining buyers, the amount of benefit of ITC passed on along with due interest was being verified from the documents submitted by the Respondent. Further, to verify the authenticity and veracity of the documents submitted by the Respondent in support of his claim of passing on the benefit of ITC and interest, emails were being sent to the 10% of such home buyers on random basis. After getting reply/response to the emails from such home buyer, further clarification would be submitted under Rule 133(2A) of the CGST Rules, 2017.

29. The DGAP had filed his further clarifications dated 24/25.11.2020 to this Authority wherein the DGAP had stated that:

- nil
- i. In continuation of the DGAP letter dated 06.10.2020, the DGAP had asked the Respondent to furnish the email ID's of the home buyers. Out of 390 home buyers, the Respondent had furnished the email IDs of 48 Home buyers only. Emails were sent to the given email IDs of those 48 homebuyers by the DGAP, out of which 40 home buyers had confirmed the receipt of the amounts as claimed by the Respondent. However, the selection of the home buyers for the confirmation of the receipt of benefit of ITC could not be left at the liberty of the Respondent. Therefore, the Respondent was once again asked to furnish the email IDs/ Contact Nos. of all the home buyers. The Respondent had furnished the email IDs of 143 more home buyers. For further verification of the authenticity and veracity of the documents submitted by the Respondent in support of his claim of passing on the benefit of ITC and interest, emails had been sent to 43 of such home buyers on random basis. After getting reply/response to the emails from such home buyers, further clarification would be submitted under Rule 133(2A) of the CGST Rules, 2017. Further, the Respondent was also asked to furnish the email IDs of remaining home buyers.
 - ii. Further, in respect of Unit No. F-1102 in the name of Mrs. Kuljit Kaur Dhillon, the Respondent had submitted the "Deed of Settlement" dated 04.12.2019 executed between Mrs. Kuljit Kaur Dhillon and the Respondent before the DGAP.
 - iii. This was an interim reply in response to the clarification sought by this Authority under Rule 133(2A) of the CGST Rules, 2017.

30. This Authority had directed the DGAP to file final clarification report in the matter. In response, the DGAP has filed additional clarification report dated 18.12.2020 wherein it was submitted that in addition to the 40 homebuyers who had earlier confirmed the receipt of ITC benefit amount from the Respondent, the DGAP had sent Emails to 46 homebuyers on random basis, out of which, only 36 homebuyers had responded to the Emails. 32 homebuyers, out of the 36 who had responded, had confirmed the receipt of ITC benefit from the Respondent, whereas, 4 homebuyers had denied receiving any benefit from the Respondent.
31. Further, this Authority vide its Order dated 04.02.2021 directed the DGAP to verify the claim of the Respondent that he had already passed on the benefit of the ITC in respect of 27 home buyers selected randomly from the total 390 homebuyers. The DGAP was also directed to produce acknowledgements/receipts regarding passing on the benefit to the buyers of Flat Nos. D-1802, D-201, C-803 and C-1701, who had previously denied to have received the benefit of ITC from the Respondent. In response, the DGAP has submitted his report dated 04/05.03.2021 wherein, he has stated that the Serial no. 1 & 2 were repeated at serial no. 26 & 27 respectively. Hence, there were actually 25 homebuyers from whom the acknowledgement were to be received from the Respondent other than the 04 homebuyers who had previously denied to have received the benefit of ITC. The Respondent had provided the Emails of the 25 homebuyers to the DGAP. The DGAP vide his letter dated 04.03.2021 has submitted that all 25 homebuyers have confirmed the

receipt of the benefit of ITC. Further, the DGAP also stated that the Respondent had submitted the copies of bank statements, copy of cheque of Rs. 8,859/- favouring Sh. Ankit Gupta and the reply Emails from the other 03 homebuyers confirming the receipt of amounts from the Respondent. Thus, the DGAP stated that he has completed his verification.

32. The proceedings in the matter could not be completed by this Authority due to lack of required quorum of Members in the Authority during the period 29.04.2021 till 23.02.2022, and that the minimum quorum was restored only w.e.f. 23.02.2022 and hence the matter was taken up for proceedings vide Order dated 24.02.2022 and the Respondent as well as the Applicant No. 1 was given an opportunity to be heard in person on 30.03.2022. The Respondent has by email dated 29.03.2022 reiterated his earlier submissions and requested to close the hearing and pass order based on his earlier submissions. The Applicant No. 1 was given further opportunity to file his written submissions, if any, and request for personal hearing if required. However, no such submissions or request was received from Applicant No.1. Hence, this Authority has taken up the matter for decision.

33. We have carefully considered the Report furnished by the DGAP and the clarifications filed by the him and the records of the case and it is revealed that the Respondent was given benefit of ITC on the supply of Construction services after the implementation of GST w.e.f. 01.07.2017 and the Respondent was required to pass on such benefit to the homebuyers by way of commensurate reduction in prices in terms of Section 171 of the CGST Act, 2017. However, it is observed that the

benefit was not passed on by the Respondent to his recipients, taking into account the aforesaid CENVAT/Input Tax Credit availability pre and post GST and the details of the amount collected from the home buyers during the period 01.07.2017 to 31.06.2019. The amount of benefit of ITC not passed on to the recipients or in other words, the profiteered amount comes to Rs. 4,74,54,151/- which includes 12% GST on the base profiteered amount of Rs. 4,23,69,778/-. Further, it is submitted by the DGAP that the Respondent had already passed on substantial amount of GST ITC to the homebuyers in accordance with the requirements of Section 171 of the CGST Act, 2017 at the time of offer of possession to the homebuyers and the Respondent had submitted the Journal Vouchers along with invoices issued to the homebuyers and Acknowledgment letters (on sample basis) from the Homebuyers as supporting documents against his claim. The Respondent had submitted that he had passed on the benefit of Rs. 3,70,88,000/- to 245 homebuyers who had already booked their flats up to 30.06.2019.

34. In view of the above facts, the Authority finds that the benefit of additional Input Tax Credit of 4.81% of the turnover has accrued to the Respondent for the project "Heritage Max". This benefit was required to be passed on to the recipients, however, the same was not done by the Respondent. Thus, Section 171 of the CGST, 2017 has been contravened by the Respondent, in as much as the additional benefit of ITC @4.81% of the base price received by the Respondent during the period 01.07.2017 to 30.06.2019, has not been passed on by the Respondent to 390 recipients including the Applicant no. 1. 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, the total additional amount of Rs. 4,74,54,151/- was required to be returned to the Applicant No. 1 and the other such homebuyers. The excess GST so collected from the recipients has also been included by the DGAP in the aforesaid profiteered amount as the excess price collected from the recipients also included the GST charged on the increased base prices. It is also observed that the Respondent has supplied construction services in the state of Haryana only.

35. The Authority finds that the Respondent vide his letter dated 19.08.2020 stated that he agreed with the amount of profiteering mentioned in the DGAP Investigation Report dated 23.03.2020 and assured the Authority that he would pass on the benefit of ITC to the respective homebuyers. Later, the Respondent had also claimed that he had passed on the said amount of benefit of ITC to his homebuyers and submitted credit notes, statements of accounts and Intimation letters to homebuyers as supporting documents.

36. From the above discussions, it is clear that the Respondent has profiteered an amount of Rs. 4,74,54,151/- during the period of investigation. Therefore, in view of the above facts, this Authority under Rule 133(3)(a) of the CGST Rules orders that the Respondent shall reduce the prices to be realized from the buyers of the flats commensurate with the benefit of ITC received by him as has been detailed above. Since, the present investigation is only up to 30.06.2019, any benefit of ITC which shall accrue subsequently shall also be passed on to the buyers by the Respondent. In relation to the

period of the present investigation by the DGAP, the amount of benefit of ITC shall be passed on to the recipients of supply as tabulated here under:

S.No.	Name of Customer	Unit No./Unit Type	Profiteering (Amount in Rs)
1	Mrs. Neeru Devi Jain	F-2701	76948.83
2	Mr. Nitin Jain	E-702	78868.18
3	Mr. Siddhartha Pahwa	C-2102	62596.25
4	Mr. Nalnish Agarwal	B-502	2282.72
5	Mr. Sanjay S. Chhabra	A-2202	1847.81
6	Mr. Satish Sawhney	A-1603	15133.78
7	Mrs. Deepika Sawhney	E-2001	403235.85
8	Mr. Sanjay Kumar Motwani	C-1702	140905.39
9	Mr. Rajiv Kumar Nayar	E-1602	96141.64
10	Major General Arvind Bhatia	F-302	92704.02
11	Mr. Sanjay Bhagat	C-1003	86714.85
12	Mr. Lalit Khanduja	E-902	83421.55
13	Mr. Sanjay Malhotra	E-1101	78844.04
14	Mrs. Sneh Kwatra	E-701	78844.04
15	Mr. Mohit Jain	C-904	76892.96
16	Mr. Gaurav Mehra	C-2303	75143.84
17	Mr. Lalmangaihzuala Pachuau	C-1102	73955.91
18	Mr. Rajat Pratap	C-504	71895.25
19	Dr. Chandan Arora	C-2203	71731.97
20	Mr. Sandeep Seth	C-1504	71650.30
21	M/S. French Food India Pvt. Ltd.	C-703	69887.45
22	Mr. Pankaj Kumar Tyagi	C-1403	69884.16
23	Mr. Rajneesh Dutta	C-702	64514.20
24	Mr. Rajiv Ranjan Singh	C-803	64479.29
25	Mr. Gautam Sharma	C-101	63896.99
26	Mr. Inder Dhawan	C-1901	61652.36
27	Mrs. Simmi Tyagi	C-1501	61635.76

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28	Mr. Samrat Singh Yadav	C-601	61635.76
29	Mr. Chinmay Jagga	A-1504	11577.09
30	M/S. Horizons Dream Vacations (P) Ltd.	B-2102	1847.81
31	Mr. Gaurav Gulati	B-402	1847.81
32	Mrs. Swati Nagpal	A-403	14416.36
33	Mr. Mahendra Swarup	B-504	13967.82
34	Mr. Surajit Deb	C-604	85031.67
35	M/S. Lassis Devel	C-804	76076.64
36	Mr. Vishal Dhawan	C-801	66161.50
37	Mrs. Suman Hooda	C-202	143996.84
38	Mrs. Meenu Singh	E-202	343607.09
39	M/S. Monnet Ispat & Energy Ltd.	E-1202	179559.90
40	Mr. Shiv Khera	E-1902	289963.13
41	Mrs. Sushma Nigam	E-402	83699.63
42	Mr. Vishwanath Kedia	C-204	82869.95
43	Mr. Suresh Chand Jain	E-1901	81247.92
44	Mrs. Shilpi Jain	E-1002	78855.46
45	Mrs. Gini Gulati	C-2304	74284.59
46	M/S. Monnet Ispat & Energy Ltd.	C-2103	71987.97
47	Mr. Mayank Sharma	C-1203	69888.41
48	Major Gen Ananta Bhuyan	C-1002	65828.51
49	M/S. Saraogi Marketing Pvt. Ltd	C-1602	64428.06
50	Mr. Abhinav Jain	C-301	63580.11
51	M/S. Monnet Ispat & Energy Ltd.	C-401	63427.33
52	Mr. Gaurav Rawat	C-501	61635.76
53	Mr. Rajeev Pipraiya	A-501	4185.48
54	Mr. Dinesh Singal	A-1803	1972.90
55	Mr. Rahul Ravi	A-2101	1847.81
56	Mr. Ravi Kochar	B-702	1847.81
57	Mr. Sanjeev Kumar	A-1903	673.40
58	Mrs. Rekha Yadav	A-402	428.44
59	Mr. Madhu Sudan Chadha	C-1204	356862.67

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60	Mr. Johit Chadha	C-1903	86714.85
61	Mr. Awtar Singh	C-2001	74075.08
62	Mr. Amit Mehta	C-902	30576.08
63	Mr. Amit Aggarwal	A-404	12230.99
64	M/S. Sandika Pharmaceuticals Pvt. Ltd.	B-1202	1847.81
65	Mr. Sumit Gupta	B-2304	345646.74
66	Mr. Vivek Singh	B-803	13688.66
67	Mr. Shiv Ram Aggarwal	A-202	1847.81
68	M/S. Vashita Properties Pvt. Ltd.	E-1201	98074.89
69	Mr. Hemant Yadav	B-1504	305822.56
70	Mr. Anupam Pandey	C-1704	502504.17
71	Mrs. Uma Bakshi	E-302	153905.52
72	Mr. Ram Gopal Agarwal	E-102	110343.22
73	Mr. Mritunjaya Nautiyal	E-1801	99697.52
74	Mr. Tarlochan Singh Badyal	E-1402	92298.90
75	Mr. Pandi Saravanan	C-2404	87897.82
76	Mrs. Sangita Gupta	E-1601	87261.65
77	Mr. Sanjay Malhotra	E-1802	176008.77
78	Mr. Saurbh Kothari	E-1701	83118.30
79	Mr. Mahendra Kumar Dhanuka	E-301	81445.79
80	Mrs. Shobha	E-2301	80420.39
81	Group Captain Sumesh Krishanlal Gilani	C-704	80042.64
82	Mr. Samarth A Kararia	C-2004	77837.12
83	Mrs. Neeru Devi Jain	F-2601	77092.56
84	M/S. MMX Infrastructure LLP	F-1401	76747.83
85	M/S. MMX Infrastructure LLP	F-502	76747.83
86	M/S. MMX Infrastructure LLP	F-2602	76649.51
87	M/S. MMX Infrastructure LLP	F-2502	76647.52
88	Mrs. Rashmi Dewan	C-2003	75143.52
89	Mr. Sanjeev Goel	C-004	74055.85
90	Mr. Hira Lal Sapru	C-404	73743.06

91	Mr. Sandeep Batra	C-203	72095.55
92	Mr. Arun Sahai	C-1904	71920.20
93	M/S. Gripex Goods Pvt. Ltd.	C-1202	68974.75
94	Mr. Arvind Mohan Mathur	C-2202	68024.61
95	Mrs. Pushpa Khatri	D-504	62815.51
96	Mr. Suraj Mal Bura	D-704	62815.51
97	M/S. MMX Infrastructure LLP	C-602	56045.95
98	Mr. Chandrabhan Kushwaha	D-801	55613.25
99	M/S. MMX Infrastructure LLP	D-702	54415.68
100	M/S. MMX Infrastructure LLP	D-902	54415.68
101	M/S. MMX Infrastructure LLP	D-1001	54034.80
102	M/S. MMX Infrastructure LLP	D-401	54034.80
103	M/S. MMX Infrastructure LLP	D-601	54034.80
104	Mrs. Priyanka Khanna	C-802	53500.61
105	Mr. Manoj Khanna	C-1801	52585.43
106	Mr. Vikas Newatia	E-601	44791.77
107	Mr. Jasbir Singh	C-903	35324.09
108	Mrs. Deepakshi Mathur	E-2102	96920.04
109	Dr. Smriti Pandey	E-1501	97249.90
110	Mrs. Poonam Madan	B-1102	9163.73
111	Mr. Sandip Adhikari	A-1901	1847.81
112	Mr. Sudhir Kumar Datta	A-201	1847.81
113	Mr. Deepak Kumar	B-1004	1847.81
114	Mr. Ashish Bangera	B-2501	1847.81
115	Mrs. Shashi	B-804	1847.81
116	Mrs. Asha Monga	A-1402	1578.45
117	Mr. Narendra Kumar Bhatnagar	B-1702	1578.45
118	Mr. Prashant Behki	B-1804	673.40
119	Mrs. Sonia C. Tewari	C-2201	78978.24
120	Mrs. Megha Dhanuka	B-1203	15768.71
121	Mr. Manish Dhawan	B-2104	131158.44
122	Mr. Suresh Kumar Sharma	E-2101	782620.69

123	Mrs. Durga Taneja	E-401	164375.16
124	M/S. Saraogi Marketing Pvt. Ltd	E-2401	81255.89
125	M/S. Central India Hi-Tech Printers Pvt.Ltd.	E-901	330915.92
126	Mrs. Sharda Rohatgi	C-1404	71693.56
127	Mr. R. K. Kapur	C-1001	62979.33
128	Mr. K. C. Mehra	D-101	55625.16
129	Mrs. Lalita Bhatia	A-003	1847.81
130	Mr. Darpan Kumar Chaudhary	A-303	1847.81
131	Mrs. Namita Chhabra	B-2103	1847.81
132	Ms. Radhika Bhatia	B-2402	1847.81
133	M/S. Arvind Share Traders Pvt. Ltd.	F-501	190055.78
134	Mr. Rajender Kumar	F-801	111119.08
135	Mrs. Anita Bhatia	C-1703	80150.60
136	Mr. Nitin Agrawal	C-1804	75056.52
137	Mrs. Vaishali Gahalian	E-1102	70245.75
138	Mrs. Gurneet Kaur	E-2002	70245.75
139	Dr. Seema Arya	C-1101	63893.16
140	Mrs. Veena Salaria	C-1503	62388.36
141	Mr. Ajay Kumar	C-1502	56045.95
142	Mrs. Nisha Gupta	C-1401	55219.34
143	Mrs. Anupama Jain	D-1102	54415.68
144	Ms. Rhea Agrawal	D-501	54034.80
145	Mr. Vikram Vohra	A-1601	17525.96
146	Mrs. Gyarsi	B-302	4541.41
147	Mr. Krishan Lal Rinwa	A-2201	2037.82
148	Mr. Tarun Lamba	A-804	1847.81
149	Mr. Sanjeev Pathania	B-801	1847.81
150	Mr. Hars Kumar	B-1803	1615.94
151	Mr. Ajay Kumar	B-2503	16283.08
152	Mr. Rahul Gaur	E-002	116266.66

153	Major Manu Pandey	E-201	83541.90
154	Mr. Ajay Kumar Agrawal	E-2302	83408.19
155	Mrs. Neha Prakash	E-2202	80700.31
156	Mrs. Anshu Jain	C-1604	78204.20
157	Mr. Prabhat Sangwan	C-901	76641.54
158	Mrs. Lata Choudhary	C-1201	74893.50
159	Mrs. Minal Singh	C-502	73558.77
160	Mr. Rajat Ray	C-1104	71935.71
161	Mrs. Sonu	C-201	69588.67
162	Ms. Ragini Jain	D-404	68367.50
163	Mrs. Vanita Jain	C-603	68352.52
164	Mr. Anuj Jain	A-802	1847.81
165	Mr. Rohit Kumar Gupta	A-1602	673.40
166	Mr. Adi Ashok Jain	A-1004	50127.20
167	Mr. Amorn Narang	E-1502	86701.65
168	Mr. Karan Dixit	C-2104	73486.26
169	Mr. Amit Kararia	C-1803	71991.15
170	Mrs. Anju Gambhir	C-1802	65140.35
171	Mr. Ashok Kumar Jain	A-1003	673.40
172	Mr. Prateek Dua	B-2602	13446.45
173	Mr. Siddharth Kumar Khaitan	C-1601	130717.50
174	Mr. Subhendu Mohanty	C-402	62574.91
175	Mr. Viraraghavan Sankaran	C-2402	81801.72
176	Mr. Vijay Krishna Sandilya	B-601	1847.81
177	Mr. Jagjit Kumar Jha	D-1604	554044.59
178	Mrs. Ruchi Tiwari	C-2403	77190.76
179	Mr. Vijay Singh Dalal	C-701	61635.76
180	M/S. Saurabh Metals Pvt. Ltd.	E-501	42328.90
181	M/S. Saurabh Metals Pvt. Ltd.	E-502	42328.90
182	Mr. Sanjeev Gupta	E-602	74096.36
183	Mrs. Chhavi Methi	B-2201	1847.81
184	Ms. Santosh Jain	C-1402	61074.31

185	Mr. Aditya Jain	D-804	60967.70
186	Mr. Gaurav Chadha	B-2203	1847.81
187	Mrs. Purna Kumari Singh	E-2402	79114.26
188	Mrs. Krishna Vasudeva	D-701	10747.03
189	Dr. Anand Singh	D-1401	533293.31
190	Mr. Ajay Garg	C-1902	67175.74
191	Mrs. Anuradha Chopra	D-1501	83084.47
192	Mr. Gautam Pratap Talwar	D-1701	84932.28
193	Mr. Vikaash Chatturvedi	A-2601	2693.60
194	Mr. Basant Singh	A-903	856.89
195	Ms. Jyoti Jha	D-1002	82515.42
196	Mr. Harish Chandani	C-302	64677.05
197	Mr. Anoop Singh	E-1401	97476.05
198	Mr. Arvind Chadha	D-304	93179.22
199	Mr. Mohit Jain	F-602	494510.81
200	Mr. Shantanu Mishra	D-1901	83084.47
201	Ms. Aarti Bhalla	D-1601	84016.24
202	Mrs. Sunita Rama	D-1101	426581.34
203	Mrs. Rita Shah Kumar	D-1201	426581.34
204	Mr. Himanish Das	D-1004	498568.23
205	Mr. Monga Ashmeet Singh	C-503	62388.25
206	Mrs. Anita Bansal	D-603	448930.57
207	Mrs. Amita Chakrawarti	D-803	449757.99
208	Mr. Sharma Nikhil Vijeshwar	D-1902	380681
209	Mr. Victor Nameirakpam	F-2301	602400
210	Mr. Vincent Nameirakpam	F-1801	649176
211	Mr. Pranav Kumar	D-904	511445
212	Mr. Nitin Goel	D-301	448438
213	Mrs. Neetu Pandey	F-1101	764918
214	Mrs. Dipty Raghuvanshi	D-1204	519597
215	Mr. Baldev Singh Chohan	D-2101	67154
216	Mrs. Renu Jain	D-204	451355

217	Captain Manjit Singh Bodhi	F-402	559539
218	Mrs. Nisha Saini	D-1202	379494
219	Mrs. Anupama Airy	D-402	362032
220	Mr. Krishna Prasad Shrivastav	D-1702	83962
221	Mrs. Najla Shafat Qazi	D-1504	454221
222	Mrs. Sahanara Mondal	D-104	461888
223	Mrs. Garima Chhabra	D-903	443263
224	Mr. Ravinder Kumar Jaggi	D-1502	462167
225	Mr. Shekhar Chandra	F-401	383689
226	Mr. Subhash Chandra	F-301	379952
227	Mr. Munish Gupta	D-202	124399
228	Ms. Mohita Vasudeva	D-302	458601
229	Mr. Sarang Dhawan	D-303	576759
230	Mrs. Vinita Agarwal	D-403	506187
231	Mr. Rash Behari Lal Saxena	F-601	399096
232	Mr. Piyush Singhal	F-2401	734779
233	Mr. Monish Kumar	D-1003	524552
234	Mrs. Neeru Chandra	D-503	410324
235	Mrs. Kanta Kashyap	C-1004	495087
236	Mrs. Rekha Sharma	E-802	639512
237	Mrs. Kuljit Kaur Dhillon	F-1102	760039
238	Mr. Ravi Shekhar	D-201	175725
239	Mr. Ankit Gupta	C-1701	78271
240	Mrs. Swati Aggarwal	D-1103	523028
241	Mr. Hemant Kumar Gupta	D-203	123225
242	Mr. Gaorav Kapoor	D-1104	495033
243	Dr. Meenakshi Thakur	D-1704	405357
244	Ms. Pooja Jain	F-1001	646670
245	Mr. Surinder Singh Mathur	F-701	137011
246	Mr. Puneet Walia	D-1603	534945
247	Mr. N. R. Ranjit	D-1703	511213
248	Mrs. Anasuya Ray	E-2502	70080

249	Mr. Nilanjan Das	D-2104	48053
250	Mr. Manish Prakash	D-2103	487641
251	Mr. Rakesh Madan	D-2001	408033
252	Mr. Vishal Pandey	D-2003	96322
253	Mr. Saurabh Bhalla	D-2301	412239
254	Mrs. Latika Sabharwal	D-1802	106736
255	Mrs. Rani Sabherwal	F-201	622670
256	Mr. Pawan Kumar Agarwal	F-1601	81722
257	Brig. Sanjeev Grover	F-202	751214
258	Colonel Ajay Kumar Roy	D-1903	651210
259	Mrs. Ruchika Anand	D-2303	249330
260	Mr. Raghav Bhandari	C-104	84332
261	Mrs. Sarla Devi	C-303	305641
262	Mrs. Neha Taneja	B-2302	9131
263	Mrs. Urmil Monga	F-1701	98740
264	Maj. Dr. Bimal Ahluwalia	E-2501	63920
265	Mr. Vivek Kumar Chowdhary	F-802	180370
266	Dr. Savita	F-1202	71802
267	Mr. Inder Jeet Babbar	F-901	154815
268	Mr. Suresh Puri	D-1801	90514
269	Mr. Tarun Suri	C-1103	123104
270	Mr. Ravindra Bisht	D-802	109846
271	Mr. Gonglin Faumei	D-1203	644085
272	Ms. Priyanka	D-2503	103931
273	Air Mshl. Harjit Singh Arora	F-2501	72537
274	Mr. Shailender Sharma	D-004	59137
275	Ms. Riya Saini	F-1201	137248
276	Mr. Surinder Singh Mathur	D-703	294083
277	Dr. Syed Musarrat Hussain	D-1403	23566
278	Mr. Bijoy Kumar Pait	C-2301	75504
279	Ms. Khushboo Sharma	C-1603	125480
280	Mr. Amit Aggarwal	D-1804	84301

281	Ms. Sujata Gauri	D-1503	52912
282	Mr. Gaurav Narchal	D-1904	106214
283	Mr. Siddharth Datta	F-1002	128691
284	Mr. Sanjeev Dania	F-2001	556979
285	Mr. Deepak Mehra	Shop 9	106182
286	Mrs. Kalawati	Shop 3	135213
287	Mr. Ravinder Kumar Chadha	D-2004	52989
288	Mr. Shalendra Vashisth	D-2403	79982
289	Mr. Sumeet Pramod Bhide	D-1803	38313
290	Mr. Deepak Yadav	F-1501	197695
291	Ms. Ekta Mahesh Satle	D-2404	24643
292	Ms. Meghna Das	D-2304	395196
293	Ms. Geeta Gulati	F-2101	171227
294	Mr. Mandeep Phogat	F-001	423518
295	Mrs. Ruchi Bansal	Shop 8	69297
296	Ms. Kashish Singh	D-2002	82191
297	Ms. Manju Atri	D-2504	401449
298	Ms. Maninder Kaur Arora	D-1404	70884
299	Mr. Kamal Deep Adlakha	D-2204	84126
300	Mrs. Neelam Kumari	Shop 1	98025
301	Mr. Saurabh Bhatnagar	C-2503	541701
302	Mr. Subhash Chandra Kajala	F-902	115399
303	Mr. Rajesh Kumar	EWS-1	3232
304	Ms. Rabeena	EWS-2	3232
305	Mr. Pawan Kumar	EWS-3	3232
306	Mr. Rajesh Kumar	EWS-4	3232
307	Ms. Safiya	EWS-5	3232
308	Ms. Ram Rati	EWS-6	3232
309	Mr. Chhote Lal	EWS-7	3232
310	Mr. Kailash Chand	EWS-8	3232
311	Mr. Krishan Kumar	EWS-9	3232
312	Ms. Parshandi	EWS-10	3232

313	Ms. Pushpa	EWS-11	3232
314	Mr. Salem	EWS-12	3232
315	Mr. Rambir	EWS-101	3232
316	Ms. Samina	EWS-102	3232
317	Ms. Kirpa	EWS-103	3232
318	Mr. Ashok Kumar	EWS-104	3232
319	Mr. Ishwar Singh	EWS-105	7273
320	Mr. Dushyant	EWS-106	3232
321	Ms. Suman	EWS-107	3232
322	Mr. Bhupender	EWS-108	3232
323	Ms. Shashi Bala	EWS-109	3232
324	Mr. Rajender Kumar	EWS-110	3232
325	Ms. Baksari	EWS-111	3232
326	Mr. Subhash Chand	EWS-112	3232
327	Mr. Jai Bhagwan	EWS-201	3232
328	Mr. Liyakat	EWS-202	3232
329	Ms. Mahmudi	EWS-203	3232
330	Ms. Bimla Devi	EWS-204	3232
331	Ms. Vidya	EWS-205	3232
332	Ms. Akhtari	EWS-206	3232
333	Ms. Kamla	EWS-207	3232
334	Ms. Kashmira	EWS-208	3232
335	Ms. Ameena	EWS-209	3232
336	Mr. Amit Kumar	EWS-210	3232
337	Ms. Laxmi	EWS-211	7273
338	Ms. Sunita	EWS-212	3232
339	Ms. Saroj Bala	EWS-301	3232
340	Ms. Bimla Devi	EWS-302	3232
341	Mr. Sunil Kumar	EWS-303	3232
342	Ms. Prem	EWS-304	3232
343	Ms. Tasviri	EWS-305	3232
344	Ms. Sarvesh Devi	EWS-306	3232

345	Ms. Sudesh Devi Devi	EWS-307	3232
346	Mr. Rahul	EWS-308	3232
347	Mr. Sudesh Sharma	EWS-309	3232
348	Mr. Harnarain	EWS-310	3232
349	Ms. Sameena	EWS-311	3232
350	Mr. Aazad	EWS-312	3232
351	Ms. Emna	EWS-401	3232
352	Ms. Nirmala Sharma	EWS-402	3232
353	Mr. Sandeep	EWS-403	3232
354	Ms. Fatma	EWS-404	3232
355	Mr. Jhoni	EWS-405	3232
356	Ms. Guddi	EWS-406	3232
357	Ms. Krishna Devi	EWS-407	3232
358	Ms. Bala Devi	EWS-408	3232
359	Ms. Shakuntla	EWS-409	3232
360	Ms. Karimam	EWS-410	3232
361	Mr. Pradeep Kumar	EWS-411	3232
362	Mr. Moji	EWS-412	3232
363	Ms. Juveda	EWS-501	3232
364	Ms. Manju	EWS-502	3232
365	Ms. Geeta	EWS-503	3232
366	Ms. Farida	EWS-504	3232
367	Ms. Parveen	EWS-505	3232
368	Mr. Ram Kumar	EWS-506	3232
369	Mr. Alam	EWS-507	3232
370	Mr. Ramavtar	EWS-508	3232
371	Ms. Maya Devi	EWS-509	3232
372	Ms. Basgar	EWS-510	3232
373	Ms. Santosh	EWS-511	3232
374	Mr. Sajid	EWS-512	3232
375	Ms. Kailash Devi	EWS-601	3232
376	Ms. Sumitra Devi	EWS-602	3232

377	Mr. Ashwani	EWS-603	3232
378	Ms. Rajni	EWS-604	3232
379	Mr. Sube Singh	EWS-605	3232
380	Mr. Rahul	EWS-606	3232
381	Mr. Umardeen	EWS-607	3232
382	Ms. Kamla	EWS-608	3232
383	Ms. Asgari	EWS-609	3232
384	Ms. Jamila	EWS-610	3232
385	Mr. Karambir	EWS-611	3232
386	Ms. Natho Devi	EWS-612	3232
387	Ms. Mamta	EWS-701	3232
388	Mr. Sahun	EWS-702	3232
389	Ms. Shashi	EWS-703	3232
390	Ms. Geeta Devi	EWS-704	3232
	Total		47454151

37. It is also evident from the above narration of the facts that the Respondent has denied benefit of ITC to the buyers of his flats in contravention of the provisions of Section 171 (1) of the CGST Act, 2017 and he had thus resorted to profiteering. Hence, he has committed an offence for violation of the provisions of Section 171 (1) during the period from 01.07.2017 to 30.06.2019 and therefore, appears to be liable for imposition of penalty under the provisions of Section 171 (3A) of the above Act. However, the provisions of Section 171 (3A) have been inserted in the CGST Act, 2017 w.e.f. 01.01.2020 vide Section 112 of the Finance Act, 2019 and it was not in operation during the period from 01.07.2017 to 30.06.2019 when the Respondent had committed the above violation and hence, the penalty under Section 171 (3A) cannot

be imposed on the Respondent for such period. Accordingly, notice for imposition of penalty is not required to be issued to the Respondent.

38. The concerned jurisdictional CGST/SGST Commissioner is directed to ensure compliance of this Order. It may be ensured that, within a period of three months of the date of receipt of this Order, the benefit of ITC is passed on by the Respondent to each homebuyer in accordance with this Order along with interest @18% from the date when the amount was profiteered by the Respondent till the date of payment of such amount to the homebuyers. In this regard an advertisement of appropriate size which is legible to public without extra efforts may also be published in minimum of two local Newspapers/vernacular press in Hindi/English/local language with the details i.e. Name of builder (Respondent) – M/s Dreamhome Infrastructure Pvt. Ltd., Project- "Heritage Max", Location- Gurugram, Haryana and amount of profiteering Rs.4,74,54,151/- so that the Applicant No.1 along with non-applicant homebuyers can claim the benefit of ITC which is not passed on to them. Homebuyers may also be informed that the detailed NAA Order is available on Authority's website www.naa.gov.in. Contact details of concerned jurisdictional CGST/SGST commissioners responsible for compliance of the NAA's order may also be advertised through the said advertisement.

39. Further, this Authority as per Rule 136 of the CGST Rules 2017 directs the concerned jurisdictional CGST/SGST Commissioner to submit a Report regarding compliance of this Order to the Authority and

the DGAP within a period of 4 months from the date of receipt of this Order.

40. Further, the DGAP is also directed to monitor the compliance of the Order by the concerned jurisdictional CGST/SGST Commissioner.

41. The Hon'ble Supreme Court, vide its Order dated 23.03.2020 in Suo Moto Writ Petition (C) no. 3/2020, while taking suomoto cognizance of the situation arising on account of Covid-19 pandemic, has extended the period of limitation prescribed under general law of limitation or any other specified laws (both Central and State) including those prescribed under Rule 133(1) of the CGST Rules, 2017, as is clear from the said Order which states as follows:-

“A period of limitation in all such proceedings, irrespective of the Limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended w.e.f. 15th March 2020 till further order/s to be passed by this Court in present proceedings.”

Further, the Hon'ble Supreme Court, vide its subsequent Order dated 10.01.2022 has extended the period(s) of limitation till 28.02.2022 and the relevant portion of the said Order is as follows:-

“The Order dated 23.03.2020 is restored and in continuation of the subsequent Orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed

under any general or special laws in respect of all judicial or quasi-judicial proceedings.”

Accordingly this Order having been passed today falls within the limitation prescribed under Rule 133(1) of the CGST Rules, 2017.

42. A copy each of this Order be supplied, free of cost, to the Applicants, the Respondent, Commissioners CGST/SGST Haryana, the Principal Secretary (Town and Country Planning), Government of Haryana as well as HRERA for necessary action. File be consigned after completion.

S/d
(Amand Shah)
Technical Member &
Chairman

S/d
(Pramod Kumar Singh)
Technical Member

S/d
(Hitesh Shah)
Technical Member

Certified copy




(Dinesh Meena)
NAA, Secretary

File No. 22011/NAA/157/Dreamhome/2020

Dated: 13.05.2022

Copy To:-

1. M/s Dreamhome Infrastructure Pvt. Ltd, 101, Tower D, Global Business Park, Mehrauli Gurgaon Road, Gurugram Haryana - 122002
2. Shri Hemant Kumar Gupta, F-61, Nivedita Kunj, Sector – X, R.K. Puram, New Delhi.
3. Chairman, Haryana Real Estate Regulatory Authority, New PWD Rest House, Civil Lines, Gurugram, Haryana.
4. Principal Commissioner of CGST, GST BHAVAN, Plot No. 36-37, Sector - 32, Gurugram, Haryana – 122001.
5. Commissioner Commercial Taxes, Haryana, Vanijya Bhawan, Plot No. I-3, Sector – 5, Panchkula – 134151.
6. 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.
7. Director General, Department of Town & Country Planning Haryana, Plot No. 3, Sec-18 A, Madhya Marg, Chandigarh-160018
8. Guard File.

Case No. 08/2022

Sh. Hemant Kumar Gupta Vs. M/s Dreamhome Infrastructures Pvt. Ltd.