BEFORE THE NATIONAL ANTI-PROFITEERING AUTHORITY

UNDERTHE CENTRAL GOODS & SERVICES TAX ACT, 2017

Case No.	:	11/2022
Date of Institution	:	31.12.2020
Date of Order	:	12.05.2022

In the matter of:

1. Shri Yogesh Sharma, A 603, Knightsbridge Apartments, ITPL Road, Brookefield, Kundalalhalli, Banglore, Karnataka-560037.
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. Total Environment Habitat Pvt. Ltd., 78, ITPL Main Road, EPIP Zone, Whitefield, Bangalore, Karnataka-560066.

Respondent

Quorum:-

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

Present:-

1. None for the Applicant No. 1.
2. Shri Raminder Singh, Assistant Commissioner for the DGAP.
3. Shri K Ramakrishna Bhat, Consultant for the Respondent.

ORDER

1. The present Report dated 27.11.2020 has been received from the Applicant No. 2 i.e. the Director General of Anti-Profiteering (DGAP) after a detailed investigation, under Rule 129 (6) of the Central Goods & Service Tax (CGST) Rules, 2017. The brief facts of the case are that the Applicant No. 1 had filed an application under Rule 128 (1) of the CGST Rules, 2017 against the Respondent alleging profiteering in respect of construction service supplied by him. The Applicant No. 1 had stated that he had purchased a flat in the Respondent's project "Pursuit of a Radical Rhapsody" and had alleged that the Respondent had not passed on the benefit of Input Tax Credit (ITC) to him by way of commensurate reduction in the prices.

2. The DGAP has further reported that the Karnataka State Screening Committee on Anti-profiteering examined the said Application and observed that the Respondent had not passed on the appropriate benefit of ITC to the Applicant No. 1 as the additional ITC available to Respondent should have been apportioned against the installments towards the price of the flat. The Karnataka State Screening Committee forwarded the said Application with its recommendation, to the Standing Committee on Anti-profiteering for further action, in terms of Rule 128 of the Rules.

3. The DGAP has further stated that the aforesaid reference was examined by the Standing Committee on Anti-profiteering, in its meeting held on 20.03.2020, the minutes of which were received in the DGAP's office on 06.05.2020, whereby it was decided to forward the same to this Authority, to conduct a detailed investigation in the matter.

4. The DGAP has also stated that the Applicant No. 1 had submitted the following documents along with his Application:

   a. Copy of demand letters issued to him, both pre-GST and post-GST.

   b. Duly filled APAF form.

5. The DGAP has further submitted that the Applicant No. 1 had booked Flat No. 1114 in the Respondent's project "Pursuit of a Radical Rhapsody", for which Agreement for Sale, Construction Agreement & Customization Supplementary Agreement executed on 13.06.2016, in the pre-GST era.

6. The DGAP has also 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 DGAP on 04.06.2020, 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 given an opportunity to inspect the non-confidential evidences/information submitted by the Applicant No. 1 during the period 19.06.2020 to 22.06.2020, which the Respondent couldn't avail of. However, the Respondent requested for copy of the

complaint and details of description of the goods or services in respect of which the proceedings had been initiated and summary of the statement of facts on which allegations were based vide email dated 23.06.2020, and the same was provided accordingly.

7. The DGAP has further reported that the Applicant No. 1 vide his letter dated 25.06.2020, received in the DGAP on 13.07.2020 submitted that he wanted to voluntarily withdraw his complaint against the Respondent and requested to drop the complaint citing that there was some confusion at his end regarding benefit of ITC, which had since been clarified to his utmost satisfaction now. The Applicant No. 1 stated that earlier he was under impression that benefit of ITC should be paid by way of cash refund, however, now it had been clarified by the Respondent that the benefits were going to be adjusted fully against his future milestones dues payable to the Respondent which fell before handing over the apartment. In this regard, although the Applicant No. 1 had withdrawn the complaint, it was clear that the additional benefit of ITC had not been passed on to the Applicant No. 1at the time of raise of demands post-GST implementation. Further, the Respondent had been availing additional benefit of ITC and using the same to discharge his GST liabilities against the demands raised or advances received since GST implementation, while collecting GST from the home-buyers without extending any benefit to the home-buyers all this while. Accordingly, irrespective of the request of the Applicant No. 1, the investigation was not dropped and vide e-mail dated 23.12.2020, the Applicant No. 1was given an opportunity to inspect the non-

confidential documents/reply furnished by the Respondent on or before 29.12.2020, which the Applicant No. 1 did not avail of.

8. The DGAP has stated that the period covered by the current investigation was from 01.07.2017 to 30.04.2020.

9. The DGAP has further reported that as the reference was received in the DGAP's Office on 06.05.2020, the time limit to complete the investigation was up to 05.11.2020, unless extended by a further period of 3 months as per Rule 129(6) of the Rules by this Authority. However, in light of Covid-19 pandemic, the investigation could not be completed on or before the above dates due to force majeure. Accordingly, this Report was being furnished in terms of the Notification No. 91/2020-Central Tax dated 14.12.2020, issued by the CBIC under Section 168A of the Act wherein the last date for computation of such cases had been extended up to 31.03.2021.

10. The DGAP has also reported that in response to the Notice dated 04.06.2020, the Respondent submitted his reply vide letters/e-mails dated 23.06.2020, 14.07.2020, 06.08.2020, 03.09.2020, 12.09.2020, 16.10.2020, 29.10.2020, 02.11.2020, 16.11.2020, 01.12.2020, 08.12.2020, 09.12.2020, 10.12.2020, 16.12.2020, 18.12.2020, 21.12.2020, 22.12.2020, 23.12.2020, 24.12.2020, 28.12.2020 and 29.12.2020.

11. The DGAP has further stated that vide aforementioned letters/e-mails, the Respondent submitted the following documents/information:

    (a) Copies of GSTR-1 Returns for the period July, 2017 to April, 2020.

(b) Copies of GSTR-3B Returns for the period July, 2017 to April, 2020.

(c) Copy of Electronic Credit Ledger for the period 01.07.2017 to 30.04.2020.

(d) Copies of Tran-1 for the period July, 2017 to December, 2017.

(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 Applicant No. 1.

(g) CENVAT/ITC register for the period April, 2016 to April, 2020.

(h) Copy of Balance Sheet for FY 2016-17 & 2017-18.

(i) Tax rates, pre-GST and post-GST.

(j) Details of turnover, output tax liability/GST payable and ITC availed and his reconciliation with the turnover as per the list of home-buyers.

(k) List of home buyers in the project "Pursuit of a Radical Rhapsody" for both phase I & II.

12. The DGAP has also stated that the Respondent vide his submission dated 28.12.2020 had submitted that the information shared, documents and data submitted was confidential in nature and was to be treated as Confidential in terms of Rule 130 of the Rules.

13. The DGAP has further reported that the subject Application, various replies of the Respondent and the documents/evidences on record

had been carefully examined. The main issues for determination was 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, in terms of Section 171 of the CGST Act, 2017.

14. The DGAP has also reported that para 5 of Schedule-III of the CGST Act, 2017 (Activities or Transactions which shall be treated neither as a supply of goods nor a supply of services) reads as *"Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building"*. Further, clause (b) of Paragraph 5 of Schedule II of the CGST Act, 2017 reads as *"(b) construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of Completion Certificate, where required, by the competent authority or after his first occupation, whichever was earlier"*. Thus, the ITC pertaining to the residential units which was 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 are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the

input tax as is attributable to the said taxable supplies including zero-rated supplies".

Section 17 (3) "The value of exempted supply under sub-section (2) shall be such as maybe prescribed and shall include supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building".

Therefore, 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.

15. The DGAP has further submitted that in response to the Notice of Initiation of investigation dated 13.05.2019, subsequent reminders and summons, the Respondent vide his submission dated 29.12.2020 stated:-

    a. That the Project was in 3 phases. Phase-1 commenced on Dt.14.10.2017. Phase 2 was commenced on Dt. 02.01.2019. Phase 3 was commenced on Dt. 17.08.2020.

    b. That separate accounts were maintained for each phase of the project "Pursuit of a Radical Rhapsody" as mandated under erstwhile CENVAT Credit Rules 2004, present CGST Rules 2017 & RERA regulations.

    c. That besides phase 1, other phases of the project were launched post GST regime, where availability of additional ITC was known and accordingly final prices with customers were agreed upon. Home buyers in the 1st phase were informed

that benefits of ITC accruing to the Respondent should be passed on to them at the end of project as actual quantum of benefit should be known at that point only.

d. That in his case, he had planned to develop several towers spread across different phases, and he was in the process of developing many towers at present, each of these different towers were initiated at a different point of time, that the progress of each tower was at a different stage.

e. That in terms of the provisions of the RERA Act, promoters were legally bound to register his on-going as well as new projects, and maintain separate accounts for each of the projects. In compliance, he had obtained RERA registration for each of the on-going projects as well as for other phases planned and hence each phase should be considered as a separate project.

f. The Respondent vide his submissions dated 29.12.2020, provided the RERA certificate for each of the separate phases, vide his submissions dated 24.12.2020, provided details of credit availed during pre & post GST regime for Phase -I.

g. That he maintained separate accounts for each of these phases. From RERA certificate and separate books of accounts for CENVAT/ITC maintained by the Respondent it was claimed by him that each project was different from another and Phase-II and Phase-III were launched post-GST. Credit of one project might not be clubbed with other project else it should jeopardize the interest of the home-buyers of one project at the cost of benefit to the other.

Sl. No.	Project Name	RERA Registration	Project Start Date as per RERA	Date of Approval as per RERA
1.	Pursuit of a Radical Rhapsody Phase 1	*PRM/KA/RERA/ 1251/446/PR/17 1014/000433*	19-10-2015	14-10-2017
2.	Pursuit of a Radical Rhapsody Phase 2	*PRM/KA/RERA/ 1251/446/PR/19 0102/002271*	01-11-2018	02-01-2019
3.	Pursuit of a Radical Rhapsody Phase 3	*PRM/KA/RERA/ 1251/446/PR/20 0817/003551*	01-11-2018	17-08-2020

h. That it was clear that the credit on Input Services was admissible to the Respondent under Rule 2(l) of the Cenvat Credit Rules 2004, which was utilized to pay Service Tax.

i. That he was also allowed to avail the credit of VAT paid on the purchase of goods under Section 10 of the Karnataka VAT Act (hereinafter referred to as "KVAT Act"), which was utilised to pay outward VAT liability.

16. The DGAP further stated that under KVAT Act, Work Contractor who opt to go under Regular scheme was entitled to avail ITC. The term 'Sale' as defined under Section 2(29)(b) of the KVAT Act, included transfer of property in goods involved in the execution of a Works Contract. In this regard, upon analysing the KVAT Act, and invoices raised by the Respondent to home-buyers it was observed that VAT for Work Contract was levied @14.5% on 70% the construction value of the demand made from the home-buyers. Thus, it was evident that there was a direct correlation between the demand made from the home buyers and the VAT charged upon them.

17. The DGAP has further reported that VAT was charged on the Work Contract agreement between the buyers and the developers in terms of the explicit definition provided in Section 2(29)(b) of the KVAT Act. Hence, the claim of admissibility of VAT credit by the Respondent and his inclusion while deciding the costing of units was found to hold true and ITC of VAT in the pre-GST period should be considered to determine the additional benefit of ITC post implementation of GST.

18. The DGAP has also reported that the Phase-1 consists of Tower 1 to Tower 4 and Villa 01-49, Phase-II consists of Tower 5 to Tower 7 and Villa 50-64, and Phase-III consists of Tower 9. The Respondent had submitted bifurcation of Cenvat/ITC availed for Phases-I & II and ITC register for the Phases-I & II. The contention of the Respondent that Phase–II of the project commenced only in January 2019 i.e. post GST regime could not be acceded to in as much as it was evident from the quarterly RERA Report for the period ending March 2019 as submitted to RERA Authorities by the Respondent that 29% work was completed in Phase-II, where RERA approval was received in January 2019 only. Further, as seen from the documents uploaded to the RERA Karnataka it appeared that the Building Plan was approved way back in October, 2015. In respect of the other phase i.e. Phase–I wherein the bookings had started way back in 2011-12 the percentage of completion up to 31.03.2019 was only 53. As seen from the Respondent submission dated 24.12.2020, it was observed that the Respondent sold certain units in Towers 5, 6 & 7, in the pre-GST period itself which was in contradiction to his contention of commencement of Phase-II in post-GST period. In the light of the above facts, the bifurcation of ITC for Phase I & II given by the

Respondent didn't appear to be proper. Therefore, in the light of the observations discussed supra both the phases i.e. Phase I & II had been considered for the purpose of determination of profiteering. As no units were sold in Phase-III, and RERA approvals were also received beyond the impugned period covered under the investigation, Phase-III was being excluded from the purview of investigation.

19. The DGAP has further submitted that prior to 01.07.2017, i.e., before GST was introduced, the Respondent was eligible to avail CENVAT credit of Service Tax paid on the input services. However, CENVAT credit of Central Excise duty paid on the inputs was not admissible as per the CENVAT Credit Rules, 2004, which was in force at the material time. Moreover, since the Respondent were paying VAT @14.50% on 70% of the construction value under KVAT Regular Scheme, he were eligible to avail ITC of VAT paid on the inputs. Further, post-GST, the Respondent could avail the ITC of GST paid on all the inputs and input services. From the information submitted by the Respondent for the period April, 2016 to April, 2020, the details of the ITC availed by them, his turnover from the project "Pursuit of Radical Rhapsody-I & II" and the ratio of ITC to the turnover, during the pre-GST (April, 2016 to June, 2017) and post-GST (July, 2017 to April, 2020) periods, was furnished in table- 'A' below:

(Pursuit of a Radical Rhapsody) Table 'A' (Amount in ₹.)

S. No.	Particulars	(Pre-GST) April, 2016 to June, 2017	(Post-GST) July, 2017 to April, 2020
1	Credit of Service Tax Paid on Input Services (A)	54,126,139	-
2	Input Tax Credit of VAT Paid on Inputs (B)	9,356,756	-
3	Total CENVAT/VAT/Input Tax Credit Available (C)= (A+B)	63,482,895	-
4	Input Tax Credit of GST Availed (D)	-	166,458,247
5	Turnover as per Home-buyers list (E) *	1,234,576,671	4,229,524,240
6	Total Saleable Residential Area in sq. ft. (F)	2,517,616	2,517,616
9	Sold Area Relevant to Turnover in sq. ft. (I)	500,618	1,177,966
10	ITC proportionate to Sold Area (J)	12,623,323	77,884,060
11	Ratio of CENVAT/ VAT/Input Tax Credit to Turnover (K=J/E)	1.02%	1.84%

The DGAP has stated that the above table- 'A', it was clear 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 1.02% and during the post-GST period (July, 2017 to April, 2020), it was 1.84%. This clearly confirms that post-GST, the Respondent had benefited from additional ITC to the tune of 0.82% [1.84% (-)1.02%] of the turnover for the project "Pursuit of Radical Rhapsody-I & II".

20. The DGAP has reported that the Central Government, on the recommendation of the GST Council, had levied 18% GST on construction service (after one third abatement towards value of land, effective GST rate was 12% on the gross value), vide Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017. Accordingly, the profiteering had been examined by comparing the applicable tax rate and ITC available to the Respondent during for the pre-GST period (April, 2016 to June, 2017) when Service Tax @ 15% on net value of work contract (60% abatement on the gross value)(total tax rate was

6% on the basic price)and VAT@ 14.50% on the net construction value (30% abatement on the gross value)(total tax rate was 10.15% on the basic price) were leviable with the post-GST period (July, 2017 to April, 2019) when the effective GST rate was 12% on the gross value.

21. The DGAP has submitted that the basis of the figures contained in table- 'B' above, the comparative figures of ITC availed/available as a percentage of the turnover in the pre-GST and post-GST periods and the recalibrated basic price as well as the excess collection (profiteering) during the post-GST period, was tabulated in table- 'B' below:

(Pursuit of a Radical Rhapsody)*		Table 'B'		(Amount in ₹.)
S. No.	Particulars		Pre-GST	Post- GST
1	Period	A	April,2016 to June, 2017	July,2017 to April,2020**
2	Output tax rate (%)	B	16.15%	12.00%
3	Ratio of CENVAT/VAT/GST Input Tax Credit to Total Turnover as per Table - B above (%)	C	1.02%	1.84%
4	Increase in input tax credit availed post-GST (%)	D	-	0.82%
5	**Analysis of Increase in input tax credit:**			
6	Total Basic Demand during July, 2017 to April, 2020	E		4,22,95,24,240
7	GST @12%	F		50,75,42,909
8	Total Actual Demand	G=E+F		4,73,70,67,148
9	ITC Benefits to be passed on Basic Price	H=E*D or 0.82% of E		3,46,37,940
10	Recaliberated Basic Price	I=E-H		4,19,48,86,299
11	GST @12%	J= I*12%		50,33,86,356
12	Recaliberated Cum-tax Price	K=I+J		4,69,82,72,655
17	**Excess Collection of Cum-tax Demand raised or Profiteered Amount**	**L=G-K**		**3,87,94,493**

(* Typographical errors in Table Title are corrected, ** Typographical errors in Column Title are corrected)

22. The DGAP has also stated that the Table- 'B' above, it was clear that the additional ITC of 0.82% of the turnover should had resulted in commensurate reduction in the basic price as well as cum-tax price for the home-buyers of the project "Pursuit of Radical Rhapsody-I & II".

Therefore, in terms of Section 171 of the CGST Act, 2017, the Respondent had not reduced the basic prices for the buyers of these two projects commensurate to the additional benefits accrued and this benefit of the additional ITC was required to be passed on by the Respondent to the recipients. In other words, by not reducing the pre-GST basic price on account of additional benefit of ITC and charging GST @12% on the pre-GST basic price, the Respondent appear to had contravened the provisions of Section 171 of the of the CGST Act, 2017.

23. The DGAP has also reported that the having established the fact of profiteering, the next step was to quantify the same. On the basis of the aforesaid CENVAT/input tax credit availability in the pre and post-GST periods and the demands raised by the Respondent on the Applicant No. 1 and other home buyers towards the value of construction on which GST liability @ 12% was discharged by the Respondent during the period 01.07.2017 to 30.04.2020, the amount of benefit of ITC not passed on to the recipients or in other words, the profiteered amount comes to ₹ 3,87,94,493/- which included GST on the base profiteered amount of ₹ 3,46,37,940/-. The buyer (of flats sold up to 30.04.2020) and unit no. wise break-up of this amount was given for Project "Pursuit of Radical Rhapsody-I & II".

24. The DGAP has further stated that the investigation, it was pertinent to mention here that above computation of profiteering was with respect to 380 home buyers among all the live customers as on 30.04.2020 in the project "Pursuit of Radical Rhapsody-I & II".

25. The DGAP has further submitted that the above discussion, it appears that post-GST, the benefit of additional ITC to the tune of

0.82% of the turnover, accrued to the Respondent and the same was required to be passed on by the Respondent to Applicant No 1 and the other eligible recipients. Section 171 of the CGST Act, 2017 appears to had been contravened by the Respondent inasmuch as the benefit of additional ITC on the demand raised by the Respondent during the post-GST period from 01.07.2017 to 30.04.2020, had not been commensurately passed on to the Applicant No. 1 and the other recipients. On this account, the Respondent had been found to have profiteered an amount of ₹ 3,87,94,493/- which included both the profiteered amount @ 0.82% of the base price and GST on the said profiteered amount. On this account, the Respondent had realized an excess amount to the tune of ₹ 72,343/- from the Applicant No. 1 which included both the profiteered amount on the basic price to the tune of ₹ 64,592/- and GST on the said profiteered amount as mentioned at Serial No 182. Further, the investigation reveals that the Respondent had realized an excess amount of ₹ 3,87,22,150/- which included both the profiteered amount on the basic price and GST on the said profiteered amount. All the recipients were identifiable as the Respondent had provided their names and addresses along with unit no. allotted to them. Therefore, this additional amount of ₹ 3,87,22,150/- was required to be returned to such other eligible recipients.

26. The DGAP has further reported that the present investigation covers the period from 01.07.2017 to 30.04.2020. Profiteering, if any, for the period post April, 2020, had not been examined 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.

27. The DGAP has stated that the aforementioned findings, it appears 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.

28. The above Report was carefully considered by this Authority and a Notice dated 05.01.2021 was issued to the Respondent to explain why the Report dated 31.12.2020 furnished by the DGAP should not be accepted and his liability for profiteering in violation of the provisions of Section 171 should not be fixed. The Respondent was directed to file written submissions. The Respondent has filed written submissions on 15.02.2021 wherein the Respondent has submitted:-

(a) That there were three separate agreements entered by the Respondent with the Applicant No. 1 on 13/06/2016 namely in respect of property at 1114 of Pursuit of Radical Rhapsody Phase I:

I. Agreement for sale

II. Construction agreement

III. Interior customization supplementary agreement (ICSA)

That the Respondent replied to DGAP vide letter dated 12/10/2020 with the copies of all the three agreements entered with the Applicant No. 1 for unit No. 1114 and also intimated the deliberations he had regarding reduction in

price in the final bills. The Applicant No. 1 was under the wrong impression the ITC was being paid in cash and when explained in detail he agreed for adjustment of the same in the final settlement. The Applicant No. 1 informed the Respondent that he had withdrawn the complaint filed before the DGAP stating that he had realized his mistake and was withdrawing his complaint. The Applicant No. 1 had also forwarded copy of the same to him. In view of withdrawal of the complaint the Respondent requested for conclusion of the investigation. However the DGAP vide email dated 23/12/2020 sought for the documents and continued to investigate the matter in spite of the withdrawal of the complaint by the Applicant No. 1. The anti-profiteering investigation was initiated based on the complaint of the Applicant No. 1 and if he made a mistake in his perception of law & after getting convinced withdrew it. Further, it was incumbent upon the DGAP to close the investigation, however it was continued. It was like husband and wife going for divorce for silly reason to the court but later realize the mistake and decided to withdrew divorce application and to stay happily married forever but it were the advocates that wanted him to be divorced. Similar was the case here where the aggrieved party had understood the issue and withdrew his complaint based on the facts that the benefit of accrued input tax benefit was being passed on later but the problem was with the Department. As per the above three agreements the amount in respect of Agreement for Sale of

Land and Construction Agreement was fixed. However, in respect of Interior Customization Supplementary Agreement (ICSA) the exact cost had to be arrived only after the completion of the structure and based on the specification desired by the Applicant No. 1, the charges would be decided. Hence it was too early to decide the exact amount of ITC to be passed on and the Act specifically provided for the reduction in price at the time of transaction. Hence, he had decided to arrive at the exact figure at the time of final settlement in order to avoid corrections in the figures too often and also it was in order as per the Act. The Act does not specify as to the time of reduction in price. As long as the transaction was alive and not finalized and the total price of the project was also could not be finalized and corresponding deduction in price obviously could not be quantified.

(b) That in most of the cases this Authority had been taking a stand that since the ITC was already availed by the Respondent the same had to be passed on immediately to the Applicant No. 1 without making him wait for infinity for his dues. But if that be the case the statute would have been specified the time and manner of passing on the credit. In this case till the Completion Certificate was issued and property was handed over to the Applicant No. 1, the agreement was only for construction. Till then neither the Supply of goods nor the provisions of service was complete. It was not a case where money was paid in cash and item was delivered across the table. In such cases it might be

possible that the reduction in price would be effective immediately at the time of paying the money. In the Construction Sector most of the time the Applicant No. 1payed the money at a later date and the constructor provided the services before and the payments were normally in stages. It was very important to note the fact that the supply Construction Service was 'continuous supply of service' and each stage could not be considered as individual supply to quantify the reduction in price and to pass on corresponding benefit of ITC. It was a case where the ITC was availed was on the investment made by the Respondent and not of the Applicant No.1 for that matter. Hence attributing the innuendo to his motive appeared to be not correct when the facts were otherwise and he had to be given time to settle the benefit of ITC in the final stages after correctly arriving at the exact figures rather than the imaginary figures based on the ratio adopted on certain assumptions which might not reflect the true and correct figure. This fact was clearly understood by the State Screening Committee and had clearly stated in his Report that *"the additional ITC available to Respondent should have been apportioned against the installments towards the price of the flat"*.

(c) That in Para 18 of the DGAP's Order it was alleged that from the RERA Report for March 2019 for the Phase I percentage of completion was 53%. Whereas the same in the case of Phase II though started in January 2019 but by March 2019 it

was 29%. Hence, the DGAP had decided the bifurcation of ITC for Phase I & II given by the Respondent was not correct. But fact of the matter was in the quarterly Report furnished for both the Phases the percentage completion also consisted of proportion of land area and construction area and the split up of these figures was clearly given in the RERA report. But it appeared that the DGAP in a hurry to club both the Phases into one project was blinded by these bifurcations and chose to see the other way round. The details of the break up has been furnished in the table given below:

	Phase I			Phase II		
T	Land Portion	Construction Portion	Total	Land portion	Construction portion	Total
March 19 h	14%	39	53%	13	16	29
Sept 20 e	13.52%	48.21	61.73	12.99	26.31	39.30

DGAP ought to have compared the percentage of only construction and not the land part for Phase I and Phase II which was 39 and 16 in the case of Quarter ending March 2019. Hence the inference arrived at by the DGAP on the wrong percentage needed to be set right. In case of Phase III the percentage completion of construction and land was respectively 23.78% and 10.15% and the total percentage completion as per the first quarterly Report filed for Phase III was 33.92% which clearly proved that based on the percentage completion one could not decide when the project started and any inference based on such

assumptions was baseless, concocted and erroneous. Further for the comparison DGAP was taking the percentage completion of 53% from the RERA Report but the same RERA Report for Phase II when it indicated percentage completion as 29% was not palatable to the DGAP. The DGAP was not agreeing with the completion of 29% in case of Phase II in 3 months but the same RERA Report of 31.12.2020 for 1st Quarter showed completion of 33.92% for which he had no objections and agreed that Phase III commenced after GST. This was a diabolical approach of the DGAP and was legally not tenable.

(d) That the DGAP ought to have taken into consideration the total area of construction in respect of Phase I, Phase II and Phase III and then compared the time factor required to complete the project or for that matter the %age of construction in 3 months' time before concluding that Phase II commenced pre-GST to determine the Anti-Profiteering. The comparative figures of the saleable area of construction in respect of Phase I, II and III has been furnished in the Table below:-

Phase I		Phase II		Phase III	
Residential		Residential		Commercial	
No. of units	Saleable Area (in sq ft)	No. of Units	Saleable Area (in sq ft)	No. of Units	Saleable Area (in sq ft)
468	1725952	227	772393		365000

(e) As could be seen from the above table the saleable area was more than double in case of Phase I compared to Phase II and in case of Phase III it was half of Phase II. It was a natural corollary that more the area that time taken for completion was also more. Hence it appeared the allegation made by the DGAP based on the assumptions and presumptions that Phase II started pre-GST and the bifurcation of ITC for Phase I and II given by the Respondent did not appear to be proper was nothing but a fabricated Report, contrived and did not have evidentiary value.

(f) That normally the demand was raised only after completion of the work and at any given time the amount received did not correspond to the percentage of completion. It might be noted that the total amount received as on 30.06.2017 (pre GST) was not fully for the period of Service Tax regime and all the money received after 01.07.2017 (post GST) need not be the amount attributable to GST era. Hence the comparison of turnover with pre GST and Post GST itself was erroneous.

(g) That in Para 18 of the DGAP's Report it was admitted by the DGAP that Phase I bookings had started way back in 2011-12 itself. But the data for the period from 01.04.2016 was taken though Phase I had commenced even before 01.04.2016 and the resultant turnover and ITC credit was not taken for the period from 2012 to 01.04.2016 which made huge difference in the calculation. In the entire DGAP's

Report nowhere the reasons for comparing the pre-GST inputs from April 2016 to June 2017 were given nor the reasons for excluding the details from 2012 to March 2016. Hence the calculations arrived at by the DGAP needed a relook and the Anti-Profiteering should be re-worked including the data for the years 2012 to 2016 and also not including the Phase II which started post-GST for the purpose of determination of Anti-Profiteering. Hence, the Respondent requested this Authority to consider the Profiteering only in respect of Phase I which commenced prior to GST period and accordingly he had calculated the Profiteering based on the same methodology as adopted by the DGAP. The details of data arrived at calculating was from Phase I and attached to his above written submission. As per his calculation based on the methodology adopted by the DGAP the profiteering amount appeared to be Rs. 1,06,42,551/- and not Rs. 3,87,94,493/- as claimed by the DGAP. Hence, he requested this Authority to restrict his profiteering amount.

(h) That other major point the DGAP had assumed that the commencement of Phase II started in the pre GST itself which was in contradiction to his claim of commencement of Phase III post GST for the reasons that certain units in tower 5, 6 and 7 were sold in pre GST period itself. This assumption was far from facts and any inference arrived at based on false assumption needed to be discarded *ab-initio*. The data provided by the Respondent indicated in the case

of Phase II, in respect of units namely Mr. Nagappa Pillappa and M/s Bennet Coleman & Co. Ltd. certain pre-launch bookings were made and the data of these pre-launch bookings were duly provided to the DGAP in his Reports. Copies of all these pre-launch booking offers and the agreements were enclosed with this reply. Pre-launch bookings were not sales as indicated by the DGAP. Pre-launch bookings were the bookings offered to the buyers at the initial stages of launch that were even before the approvals and permissions were obtained. It was only an offer in the event of commencement of project the intending buyer would be given preference in allotment, rate and other benefits depending on the offer. It did not offer the buyer the guaranteed right or the title to the property. It was a case where Earnest Money Deposit was made by the buyer and could be taken back anytime with interest after due date. In case the buyer wanted the property after all the approvals was obtained and the project was really launched then he had to enter into agreement to sale / maintenance. The salient features of the pre-launch offer on Phase II wherein such buyers had envisaged his interest in respect of above said pre-launch bookings of Sri Mukesh Velji Shah has been produced below:-

i. It was hereby clearly agreed by the Intending Purchaser herein that this Pre-Launch Advance amount was only for the purpose of stating a commitment into this project and the actual allotment of the unit/home should be done

later. This was only an Advance offer and did not confer any rights to the title or on the project/property/unit in any manner whatsoever.

ii. It was hereby clearly agreed by the Intending Purchaser herein that this EMD amount was only for the purpose of blocking the unit for a period of one month after the plans for the project had been sanctioned by the relevant authorities and the same should be refunded after forfeiting an amount of INR 5,00,000 (Rupees five Lakhs only) and the blocking automatically cancelled if the first installment of "advance" was not paid within thirty days of being Informed by the Respondent that the plans had been sanctioned.

iii. The approval for the project had not yet been procured and, as such, the design, dimension, and overall size of unit as well as the site layout/Masterplan, total number of units might undergo change.

iv. The Agreement for Sale should be drawn up immediately after all the required Approvals for the Project had been obtained.

v. For providing a standard measure to customers and to maintain a uniformity across projects, Total Environment had evolved a system wherein the customer was assured that 80% of the Saleable Area was Carpet Area and therefore the Saleable area was calculated as follows:

[Super Built-up Area] = [Carpet Area]/[0.80] OR [Carpet Area] x [1.25]

The carpet area included the areas of toilets, bathrooms, balconies, internal stairs, terrace gardens if built on concrete slabs and 1/3rd of the area of private gardens, if any, allotted on natural soil, as well as 50% of the area of service platforms.

vi. The Cancellation of this Advance offer commitment by the Intending Purchaser/s was not feasible until the project had been launched - unless the Approvals for the Phase I of the project was delayed beyond 31.12.2012.

vii. The above unit could not be transferred until the 1st installment of "Advance" had been paid in full. After the First installment (Advance) had been paid in full and the Agreement for Sale signed, the unit could be transferred at a cost of INR 5,00,000/- (Rupees Five Lakhs only) and in such case, the potential Transferee would have to meet and be approved by the Respondent.

viii. It was clearly agreed by the Intending Purchaser that, in case the approval was substantially delayed or if Total Environment decided not to go ahead with the project, the Advance amount received should be refunded without interest and no compensation for the same shall be payable by the Respondent.

ix. In addition to the above amounts, Service Tax & VAT as applicable at prevailing rates should be payable along with every installment.

x. Stamp duties and registration fees as well as incidental expenses should be payable on actuals by the Intending Purchaser on the Agreement for Sale as well as on the registration of the Sale Deed.

xi. All payments towards customization and improvements should be payable in full immediately on completion of the customization process.

xii. Payments towards Power, Water & Sewerage Installations, Connections & Deposits should be payable on actual.

xiii. The Maintenance Fund was planned to cover security, diesel for running the generator, AMC for the generators, elevators, pool, pumps and motors, landscaping and housekeeping of common areas, garbage collection, painting of common areas when required. It did not cover the cost of repairs to the buildings or individual units of any kind whatsoever - such repairs should be carried out after payment in advance against an estimate for the same.

xiv. The time period for the Maintenance Fund would depend on inflation rates. A statement should be sent every year showing interest (@ 9%) credited against the average balance in the fund & amount consumed out of it @ actual cost including management cost + 20% Profit.

xv. These units should be customisable only through his standard options on e Build. For further, "personalised" customisation, an additional design fee calculated at Rs.300/sq ft (Rupees Three Hundred per square foot) + Service Tax should be payable to his design partners "Shibanee & Kamal Architects" and such facility should be available on first come first serve basis for a limited number of units only.

xvi. These homes had been especially designed and detailed by "Shibanee & Kamal Architects". Any design decisions, whether interior or exterior, should be at the sole discretion of "Shibanee & Kamal Architects". No external Architects / Designers should be entertained. Before booking the above home, please ensure that you was completely comfortable with his design philosophy.

xvii. The apartment level numbering started with 1 at the lowest level - therefore an apartment on level 1 was equivalent to a ground floor apartment, level 2 was on the first floor, 3 on the 2nd floor and so on.

xviii. The apartment number was a four digit number where the first digit represented the Block, the 2nd & 3rd digits represented the Level on which it was located and the 4th digit represented the apartment type on each floor. Therefore, apartment 1032 was In Block 1, on the 3rd level (2nd floor), Type-2.

xix. All cheques were to be drawn in the name of the Respondent.

(i) That from the above said clauses of the agreement it was clearly seen that the offer was only pre-launch offer and none of the approvals were obtained at the time of this agreement. There was always an option for the buyer to sell this offer to anybody else. The pre-launch agreement did not mean the property was already sold. After the commencement of the project the buyer was once again required to enter into sale agreement and Construction Agreement and paid the amount of advance/ installment separately. The EMD given by the buyer was returned to him once the agreement to sale/ construction was entered into. In this case the agreement to sale & Construction Agreement was yet to be signed. Hence by no stretch of imagination the inference could be made that certain units in tower 5, 6 and 7 were sold in Phase II project in pre GST era. This was the fundamental error made by the DGAP without verifying the documentary evidences and throwing bald allegations against the Respondent which was not substantiated and far from facts. The Hon'ble Supreme Court in case of L&T and others v/s State of Karnataka (2013) 65V 511(SC)=2014/SSL708 held :

"The activity of construction undertaken by the Developer etc would be works contract only from the stage he enters into contract with the flat purchases".

Hence in his case in respect of these flat buyers though these was pre-launch bookings the contract started only after

entering into Agreement for Sale which was not entered into in pre-GST era.

(j) That the Respondent had intimated vide submissions dated 29.12.2020 that *"We wish to state we had planned to develop several towers spread across different places and developing many towers in each of these places which were initiated at different points of time. The progress of each tower was at a different stage. We further submit that in terms of provisions of RERA Act, promoter was legally bound to register each of the projects. In compliance to this we had obtained RERA Registration for each of the ongoing phases and hence each of him should be considered as a separate project. We had provided the details of these credit availed and turnover realized during the pre and post GST period for each Phase and we had also informed that we was maintaining separate accounts for each of these Phases".* Hence all the 3 phases were different from one another. Further invoices were raised separately mentioning the Phase I, Phase II, Phase III etc. Hence the credit of one project might not be clubbed with the other project lest it jeopardizes the interest of other home buyers of one Phase at the cost of benefit to the other.

(k) That each tower was launched at a different point of time, pricing decisions of units in each of the different towers varied from previous one based upon a number of factors and as required under prevailing Rules and separate credit accounts were maintained for each tower. Further under

RERA the Central legislation which was applicable in the Real estate sector which was implemented in Karnataka on 10.07.2017 almost coinciding with GST implementation. The Respondent had registered each phase as a separate project under RERA and maintained separate accounts for each of him which was evident from the date of approval of RERA and the various monthly statements submitted to RERA. Each of these phases commenced on different dates, details of ITC of input services and KVAT accrued had been separately maintained for each of the phases as per the CENVAT Credit Rules 2004 and tax liability of Service Tax and KVAT was separate for each of these phases. In case of Phase I the work had commenced on 19.10.2015 whereas the work commenced for Phase II much later GST regime and Phase III post GST regime as well. That was in case of Phase II and Phase III work commenced only after implementation of GST. The Phase I project had commenced before implementation of GST on 19.10.2015. If different towers were considered as one project and credit of one Phase was clubbed with that of other Phase it could jeopardize the interest of home buyers of one Phase at the cost of another. On this ground if any one raised the demand from Phase II for the erroneous calculation of adding Phase I it would only open a Pandora's box and could not be justified. Given the different stages of construction of each tower if the turnover of all the towers was clubbed together it might not be accurate and would definitely give erroneous

results. In the present case where separate books of accounts were maintained by the Respondent for each phase, separate purchase registers and ITC ledgers maintained for each phase, reconciliation of turnover to credit with statutory returns was provided and could be verified for authenticity.

(l) That though Anti-profiteering provisions mandated passing on the tax benefits arising from the GST to the customers by way of price reduction, without clear guidelines or explicit Rules it was not possible to decide the quantum of the net ITC benefit to be passed on to the customers. The sale prices of the flats were dynamic and were based on various factors like saleable area, floor rise, facing, location of the project and the payment terms etc. Each unit in a tower was unique and had different sale value. In the absence of specific instructions, it was difficult to determine the benchmark pre-GST price for passing on the benefit by reduction in the prices.

(m) That the GST law provided for disallowance of ITC credit due to non-payment (of value and tax) to the vendors within 180 days which might result in disallowance of ITC on the payments made to the sub-contractors. GST law also required payment of GST by the input supplier for making the receiver eligible to avail ITC. This clause in Section 16 of CSGT Act, 2017 had no time limit fixed. There might be recovery Notices erupting on later dates. The Anti-

profiteering provisions did not provide solution for such situations.

(n) That cancellation of bookings after 1-2 years was a common event in the real estate industry where the amount paid by the customers was required to be refunded by the developer after retention. Offering of rebates for timely payment and early move-in etc. was also prevalent in the industry. However, the time limits prescribed under the law for issuance of credit notes would lead to tax loss in many cases as the tax would have been paid but no adjustment was available. Thus, the issuance of credit notes on account of cancellation of contracts or as a result of rebates offered imposed a challenge for tax adjustments on the refundable portion and this might increase tax burden and the developer could not refund the tax amount to customers.

(o) That credit and the taxable value did not synchronize in the same month or the same period. The credit and the taxable value did not correlate in the same period. The agreement for the sale of premises entered with the buyers and the Respondent had specified milestone for recovery of the amount. Normally the Invoice was raised only after completion of milestones whereas the credit was accrued to him on incurring expenditure for continuation of the project. Hence there was no synchronization between the credit availed and the value of the taxable services provided by him during any period would definitely vary.

(p) That agreement for sale of premises entered into between the buyer and the Respondent had specified the milestones for recovery of the amount the invoice could be raised only on achieving milestones whereas the credit accrued to him on incurring expenditure for construction of the project. Therefore, there was no synchronization between the credit availed and the value of taxable service provided during any period. Due to this reason, the percentage of availment of credit during the period would also vary.

(q) That there was no synchronization between the work done and billing which also led to no synchronization between the credit availment and billing.

(r) That the DGAP had also stated that VAT was charged on the Works Contract Agreement executed between the buyers and the Respondent in terms of the explicit definition provided in Section 2 (29 (b) of the KVAT Act. Hence, the claim of admissibility of VAT credit and his inclusion while deciding the costing of units was correct and ITC of VAT in the pre-GST period was considered to determine the additional benefit of ITC post implementation of GST. Even though this case, only the erstwhile Excise Duty on the goods purchased by the Respondent was not available as credit in pre-GST period and only the same should be considered as additional credit post-GST, in determination of profiteering, however determination of profiteering by the DGAP had not accounted for the item wise availability of ITC for the goods or services pre and post-GST implementation

and hence, had to be accounted for the calculation of the profiteering by the DGAP.

(s) That the Respondent was yet to finalize the projects and high value goods and services was consumed only in the finishing stage of Construction Service. It was well known fact that the GST rates on goods and services was not sealed. The rates might vary any moment of time if the GST Council decided. Under these circumstances quantifying the reduction in prices at this stage was injustice to the Respondent as well as to his home buyers. A future increase in tax might provide the Respondent benefit of more input credit for which his home buyer might not get benefit while any reduction in tax would effectively might work negative for him. Accordingly, estimating profiteering in case of ongoing real estate project was legally incorrect. the Respondent requested to consider this aspect while deciding on the profiteering matter.

(t) That each tower was launched at a different point of time, pricing decisions of units in each of the different towers varied from the previous one based upon a number of factors and as required under prevailing Rules, separate credit accounts for each of the towers were maintained. Further, under the RERA, a central legislation, applicable on the Real Estate sector which was implemented in Karnataka on 10.07.2017, almost coinciding with the GST implementation, the Respondent had registered each tower as a separate project under RERA and maintained separate accounts for each of them which was also evident from the invoices.

(u) That each of the phase had commenced on a different date, details of ITC of input services and KVAT accrued had been separately maintained for each of the phases as per the Cenvat Credit Rules, 2004 and tax liability of Service Tax and KVAT was separate for each of these Phases. In case of Sri Venugopal Gella & others v/s M/s Shapoorji Palanji (Relationship Properties Pvt. Ltd.) Bangalore in the Case no. 59/2020 dated 31.08.2020 the Authority had held *"... The DGAP had further mentioned that if different towers were considered as one project and credit of one tower was clubbed with the other tower, it could jeopardize the interest of the home-buyers of one tower at the cost of another, Further, given the different stages of construction of each tower, the Completion Certificates received for some of them, whereas others being in different stages of construction Life cycle. The ratio of ITC to the turnover for all the towers clubbed together might not be accurate and would give erroneous results. In this scenario, where separate books of accounts had been maintained by the Respondent for each tower, separate purchase register and ITC ledger had been maintained for each phase, reconciliation of credit and turnover for each tower with the statutory returns had been provided which had been duly verified and found to be in order, it was very logical to consider each of them as a separate project, the DGAP had claimed. As the two complaints pertained to the project "PARKWEST-EMERALD", and "PARKWEST-MAPLE" respectively, the*

ambit of this investigation had been kept limited to these two projects only".

(v) That the case of the Respondent was clearly identical one to the case dealt in the investigation above. It was surprising to note that similar stand should have been taken in his case when the DGAP found such reconciliation of credit and turnover of each tower as separate project as very logical.

29. Copy of the above written submissions dated 15.02.2021 filed by the Respondent were supplied to the DGAP for Clarifications under Rule 133(2A) of the CGST Rules, 2017. The DGAP filed his Supplementary Report vide letter dated 03.03.2021 on the Respondent's submissions and had clarified:-

a. That for the contention raised by the Respondent at para 7 of his submission it was submitted that there was no provision envisaged under the CGST Act, 2017 or the Rules there under to drop verification of profiteering once the applicant No. 1 withdraws his complaint. The Standing Committee had forwarded this case with the comments *"Prima facie evidence found. State Screening Committee had submitted reasoned Report. This complaint was being forwarded to the DGAP for further detailed investigation"*. Therefore, the contention of the Respondent was erroneous and denied and accordingly the withdrawal of Application by the applicant No. 1 was also not tenable.

b. That for the averment made by the Respondent in Para 8 it was submitted that there was no provision envisaged under the CGST Act, 2017 or the Rules there under to drop the verification

of profiteering once the Applicant No. 1 withdraws his complaint. The same analogy was being followed by the DGAP in all the cases and accordingly the investigations was continued once the recommendations of the State Screening Committee and Standing committee was received Further, the ITC accrued on purchase of the material and the GST was payable on accrual basis and the project wise Cenvat / Input tax account was to be maintained by the builder under extant Rules pre / post GST. Even if the submissions of the Respondent were considered, the Respondent could have passed on the benefit of ITC on provisional basis, which he had not done.

c. That for the averments made by the Respondent at para 10, 11, 12 of his written submissions it was clarified that as per the RERA Reports submitted by the Respondent for the quarter ending March, 2019, the percentage of completion in respect of the ongoing Phase-I commenced much earlier was 53% whereas the percentage of completion in respect of Phase — II wherein the RERA certificate had been received on 02.01.2019 was 29% only. Following were the details regarding the work completion for phase I & II:

	Phase I			Phase II		
	Land portion	Construction portion	Total	Land portion	Construction portion	Total
March19	14%	39%	53%	13%	16%	29%

The percentage of completion in both the cases included land portion also as submitted by the Respondent. However, the site

preparation was a significant factor in the Construction Sector in as much as the construction work could not commence unless the land was made suitable for construction. On this count the submission of the Respondent appeared to be not tenable. Further, as seen from the Respondent's submission itself, it was evident that the Towers 5 to 7 and villas 50 to 64 belong to Phase-II and certain units had been sold in the pre GST period itself and certain amounts had been received by whatever nomenclature they might be designated attract GST in as much as the said amount was with reference to provision of service at a later date. Provisions envisaged under clause (b) of paragraph 5 of Schedule- II of the CGST Act, 2017 also reiterate the same. Accordingly, Phase-I and II had been clubbed and profiteering computed.

d. That for the contention raised by the Respondent at para 13 of his submissions, the DGAP stated that Service Tax under the Finance Act, 1994 and GST under GST, Act, 2017 were charged on accrual basis and hence on the demands raised tax was payable under the relevant law and accordingly following the procedure adopted by the DGAP in all such cases in respect of Construction Sector and upheld by this Authority in such cases the element of profiteering had been calculated.

e. For the averment made by the Respondent at para 14 of his written submission the DGAP submitted that element of profiteering had been computed following the procedure adopted by DGAP in all such cases in respect of Construction Sector and

upheld by the Authority in such cases.

f. That for the contentions raised by the Respondent at para 15 & 16 of his submissions it was clarified that the annexure enclosed was not legible. Once the expression of interest was offered and amount was received for provision of service at a later date, the amount was taxable under Finance Act, 1994 read with Point of Taxation Rules, 2011 as amended from time to time irrespective of the nomenclature adopted. The cancelled units and units sold post Occupancy Certificate had not been considered for computation of profiteering.

g. That for the averments made by the Respondent at para 17, 18 & 19 of his submissions it was stated that the element of profiteering had been computed in respect of Phases I and II clubbed together following the procedure adopted by the DGAP in all his cases in respect of Construction Sector and upheld by the Authority in such cases.

h. That for the claim made by the Respondent at para 20 of his submissions it was clarified that the submission of the Respondent was not tenable as the Report of the DGAP had been submitted under Section 171 of the CGST Act, 2017.

i. That for the contention raised by the Respondent at para 21 of his submissions it was clarified that for the units cancelled and unsold had been excluded for computation of profiteering.

j. For the contentions raised by the Respondent at para 22 to 25 of his written submissions it was clarified that the profiteering

amount had been computed following the procedure adopted by the DGAP in all his cases in respect of Construction Sector and upheld by the Authority in such cases.

k. That for the claim made by the Respondent at para 26 of his submissions it was stated that the computation of profiteering had been limited up to April, 2020 and was arrived based on the prevailing rates. Profiteering, if any, to be passed on would had to be worked out by the Respondent on his own following the procedure upheld by this Authority in the instant case and the same was to be passed on to the intended beneficiaries in proportion to the demands raised subsequent to April, 2020.

30. On the basis of the above Clarifications filed by the DGAP under Rule 133(2A) of the Rules, the Respondent was directed to file rejoinder/reply. The Respondent vide his letter dated 05.04.2021 has filed his Rejoinder and stated:-

a. That the DGAP had stated *"there was no provision envisaged under the CGST Act, 2017 or the Rules there under to drop the verification of profiteering once the Applicant No. 1 withdraws his complaint"*. It was absurd to note that the DGAP was looking for a clause in the Act to drop the proceedings when prima-facie he was very well aware that there was no issue to be investigated. Whereas in the same para of his comments though there was no specific provision in the Act, the DGAP came up with the argument *"Even if the submissions of the Respondent was considered, the Respondent could have passed on the benefit of ITC on provisional basis, which he had not done"*. To pass on the benefit of ITC, the DGAP did not need any provision

envisaged under the CGST Act 2017 or the Rules there under. It was too early to decide the extent of profiteering amount when the project was ongoing and the actual profiteering could be arrived at only after the completion of the project. Based on the sole fact that ITC was availed did not *ipso facto* mean that there was profit accrued to the builder and it had to be passed on to the home buyers. During the actual costing the builder might have taken the cost of the goods prevalent at the time of agreement and factored the cost accordingly to the client but due to delay in implementation of the project and other circumstances beyond the control of builders, the cost could have gone up to such an extent that the eligible ITC which the DGAP was pointing as ought to have passed on would have been subsumed in the escalated cost of the goods, leaving the builder at a loss than profit. The true intention and the spirit of the anti-profiteering law was not to burden the builder with imaginary profiteering arrived at by the Authorities and its consequential passing on to the client without any basis but should be based on the true and correct quantifiable legally justifiable profit that had to be transferred and this could be done only at the end of the completion of the project. Nowhere in the CGST Act it was specified that the benefit of ITC had to be passed on provisional basis immediately on availment of ITC nor did any Section of CGST Act contemplate passing the ITC provisionally. That being the case, the DGAP's version that since the Respondent had availed the ITC benefit it should be passed on immediately on provisional basis was only a

presumption not backed by Law. The availment of ITC could not be postponed infinitely as specific provisions of time frame was provided for the availment of ITC. Hence the Respondent had availed the ITC credit as and when due. However, that could not be the only reason to pass on nor the reason to quantify profitability due to the availment of ITC. It was ludicrous to presume when there was no specific provision in the Act more so and when specifically Section 171 of CGST Act states, *"Any reduction in rate of tax on any supply of goods and services or the benefit of ITC shall be passed on to the recipient by way of commensurate reduction in prices"*. Even this Section clearly specifies that the profit if at all, was to be passed on to the recipient at the time of supply or service. In the case of the Construction Work the supply and service was completed only at the time of handing over of the flat and not at the time of availing ITC credit. Hence, the Respondent was legally correct to pass on the benefit if at all only at the time of handing over of the flat or at the time receipt of the last installment of the price.

b. That it was averred that in most of the cases the Authority had been taking a stand that since the ITC was already availed by the Respondent the same had to be passed on immediately to the Applicant No. 1 without making him wait for infinity for his dues. But if that was the case the statute would have specified the time and manner of passing on the credit. In this case till the Completion Certificate was issued and property was handed over to the Applicant No. 1. the agreement was only for construction. It was not a case where money was paid in cash

and item was delivered across the table. In such cases it might be possible that the reduction in price would be effective immediately at the time of payment of money. In the Construction Sector most of the time the home buyer paid the money at a later date and the contractor provided the services before and the payments were normally in stages. It was very important to note the fact that the supply of Construction Service was 'continuous supply of service' and each stage could not be considered as individual supply to quantify the reduction in price and to pass on the corresponding benefit of ITC. Moreover Section 171 of the CGST Act did not provide for provisional passing on of profit at each stage of availment of ITC credit as contemplated by the DGAP. It was a case where the ITC was availed on the investment made by the Respondent and not of the home buyers for that matter. Hence attributing the *innuendo* to his motive appeared to be not correct when the facts was otherwise and the Respondent had to be given time to settle the benefit of ITC in the final stages after correctly arriving at the exact figures rather than the imaginary figures based on the ratio adopted on certain assumptions which might not reflect the true and correct verifiable amount. This fact was clearly understood by the State Screening Committee and had clearly stated in his Report that *"the additional ITC available to Respondent should have been apportioned against the installments towards the price of the fiat"*.

c. That other major point the DGAP had assumed that the commencement of Phase II was in the Pre-GST era itself which

was in contradiction to his claim of commencement of Phase III post GST. The DGAP has stated that certain units in tower 5, 6 and 7 were sold in pre GST period itself. This assumption was far from facts and any inference arrived at based the on false assumptions needed to be discarded *ab-initio*. The data provided by the Respondent indicated in the case of Phase II, in respect of units namely Mr. Nagappa Pillappa and M/s Bennet Coleman & Co. Ltd. etc. certain pre-launch bookings were made and the data of these pre-launch bookings were duly provided to the DGAP in his replies. Copies of these entire pre-launch booking offers and the agreements were enclosed with the reply. Pre-launch bookings were not sales as indicated by the DGAP. Pre-launch bookings were the bookings offered to the buyers at the initial stages of launch that was even before the approvals and permissions were obtained. It was only an offer in the event of commencement of project; the intending buyer would be given preference in allotment, rate and other benefits depending on the offer. It did not offer the buyer the guaranteed right or the title to the property. It was a case where Earnest Money Deposit was made by the buyer and could be taken back anytime with interest after due date. In case the buyer wanted the property after all the approvals was obtained and the project was really launched then he had to enter into a separate agreement to sale / maintenance. The salient features of the pre-launch offer in Phase II wherein such buyers had envisaged his interest in respect of above said pre-launch bookings was submitted in written submissions dated 15.02.2021.

Further, the DGAP in his Clarifications and Report had relied upon the quarterly progress Report for the period ending March 2019, and percentage of completion with respect to each of the projects as submitted to RERA, to arrive at the inference that both the phases ought to have been initiated in pre-GST period itself. The DGAP in his clarification had mentioned that *"The percentage of completion in both the cases included land portion also as submitted by the Respondent. However, the site preparation was a significant factor in the Construction Sector in as much the construction work could not commence unless the land was made suitable for construction. On this account the submission of the Respondent appeared to be not tenable."*

In this regard, it was requested that the clarification of the DGAP itself shows that he had not analyzed the details as submitted by the Respondent in its totality. As submitted the reply dated 10.02.2021, the comparative figures of the saleable area of construction in respect of Phase I, II and III was being reiterated below:

Phase I		Phase II		Phase III	
Residential		Residential		Commercial	
No. of Units	Saleable Area (in sqft)	No. of Units	Saleable Area (in sqft)	No. of Units	Saleable Area (in sqft)
468	1725952	227	772393		365000

The area, number of units approved, plan layout etc. all were different under each of the Phases and same amount of time, effort and resources would not be required to prepare the land to begin construction of different phases, each with its specific different specifications, purpose (Residential & Commercial),

starting at different point of time separated by several years. The RERA Reports and approval plans for Phase II and Phase III clearly indicated these details. So, there was no logic to club together each of the separate phases into one single project defying the regulations and declarations made under RERA, another Central regulation. Further, there were no quarterly progress Reports from date of RERA implementation till the period of approval of Phase II with RERA, which in itself was a testimony to the fact that Phase II was a separate project launched separately at a later date. Also, each of the quarterly progress Report for each of the phases had to be examined in a holistic manner to arrive at any logical inference. This piecemeal manner inference from one quarterly progress Report of Phase II was totally inaccurate and illogical and needed to be duly rescinded.

d. That it was a fact that the law with regard to the assessment of tax on advances was identical in Service Tax and GST. However the payment of due taxes or otherwise should not be a factor in computation of profiteering. Even if tax was not paid, where liable, the unpaid tax amount could not be considered as part of profit. It was a well-known fact that Government could not make Rules to distribute ill-gotten money, if tax was not paid the same could be recovered under relevant law. If not recovered no Authority under law could say the unpaid tax was profit and needed to be passed on to customers. In the case of pre-launch bookings the Respondent had not collected Service Tax from the clients as these were Earnest Money Deposits which were

to be returned to the homebuyers when they enter into agreement for construction and pay the first installment. Further all these pre-launch bookings date back to 2012 and even if the revenue decided that the same was taxable, tax could not be demanded as the same was time bared. Hence even on this count when the tax could not be demanded, the question of the availment of ITC and the resultant profitability did not arise.

e. That in most of the cases the DGAP had taken a stand that there was no set procedure for calculating the profiteering and the same was adopted based on the product time factor, construction methodology, type of agreement, mode of payment etc. but in this case instead of explaining the reasons for not including the period from 2012 to 1.04.2016, the DGAP had commented in a passing manner that the profiteering was computed following the procedure adopted by this Authority. The DGAP ought to have given the reasons for not considering the turnover prior to 01.04.2016 and also excluding the details for the said period. The DGAP had also not given the reasons why Phase II though started post GST was clubbed with Phase-I while arriving at the profiteering. No sections or rules of the CGST Act were forthcoming in the Report of the DGAP for adopting this calculation. This Authority in its Order 33/2019 in the matter of M/s Conscient Pvt. Ltd. had already finalized the stand of the DGAP that Section 171 of the CGST Act was not applicable in a case where the project had been initiated post GST implementation. Similarly, in other cases the DGAP had taken this stand that where a project had been initiated after

GST implementation, Section 171 of the CGST Act might not be attracted. However, in his reply under para 13 & 14, the DGAP had stated that profiteering had been determined using the same computing procedure as in all his cases in respect of Construction Sector and upheld by this Authority, as per Rule 126 of the CGST Rules, 2017, only 'The Authority" as constituted under Rule 122 of the CGST Rules might determine the methodology and procedure for determination as to whether the reduction in the rate of tax on the supply of goods or services or the benefit of ITC had been passed on by the registered person to the recipient by way of commensurate reduction in prices. However, it was clear that no such methodology and procedure had been determined and notified by the Authority. In absence of any such methodology, the DGAP was at liberty to adopt any methodology.

Further, under Rule 133(5) of the CGST Rules, if the Authority had reasons to believe that there had been contravention of the provisions of section 171 in respect of goods or services or both other than those covered in the Report of the DGAP, it may, for reasons to be recorded in writing, within the time limit specified in sub Rule (1), direct the DGAP to cause Investigation or inquiry with regard to such other goods or services or both, in accordance with the provisions of the Act and these rules. However, the DGAP had crossed his mandate without any directions on record to cover one of phases launched post-GST while choosing to ignore another. Authority had established a precedent in case of

Construction Sector, that if required, it might direct the DGAP under Rule 133(5) of the Rules to investigate any other project besides the one under Investigation for violation of Section 171 of the CGST Act. However, in the present case, the DGAP had selectively chosen to investigate a post-GST launch project, clubbing it with an ongoing project, whil e leaving another such out of it without giving any logic or following any rules whatsoever.

f. That the DGAP had come up with a lame excuse that the annexures were not legible however the Respondent had furnished the legible copies and also reproduced in his reply all the clauses mentioned in the pre booking data sheet. Assuming but not agreeing that annexures enclosed were not legible, it was not understood what prevented the DGAP not to consider the details of the clauses type written legibly in (i) to (xix). The Respondent had predicted that the DGAP in absence of any other argument to support his claim would take umbrage under this not legible clause and hence the same was reproduced in para 15 and typed for clarity. Now coming to the taxation part of it the amount indicated in pre-launch deposit the same was not taxable for the reasons that the GST Act clearly distinguished the deposit from the purview of tax, as per Section 15 (1) of the CGST Act 2017, *"The value of supply of goods and services or both shall be the transaction value, which was the price actually paid or payable for the said supply goods or services or both where the supplier and the recipient of the supply was not related*

and the price was the sole consideration (Emphasis Supplied) for the supply,"

(2)The value of supply shall include_ _ _",

Further, "consideration" was defined in Section 2(31) as, *"(a) Any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government.*

(b) The monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Govt. or a State Govt: Provided that a deposit given in respect of the supply of goods or service or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply".

In the present case the advance received was accounted in his books of accounts as refundable deposit even the pre-launch term sheet and the conditions prescribed clearly established that the amount received was only pre-deposit which needed to be refunded at the time of booking. The law was very clear that the deposit given in respect of supply of goods or services or both would not be considered for the

said supply as long as the same was not treated as consideration for the said supply. In his case the pre-launch deposit was purely considered as refundable deposit and once the client books the flat we enter into agreement and refund the pre-launch deposit as on date these clients was yet to book his flats and was still considered as deposits. Further, the project commenced post GST hence GST Law was applicable in respect of this project and the deposits so collected amount had to be excluded while calculating the profiteering. The DGAP had stated *"Once the expression of interest was offered and amount was received for provision of Service at a later date, the amount was taxable under Finance Act1994 read with Point of Taxation Rules 2011 as amended from time to time irrespective of the nomenclature adopted."*

Now that DGAP was very well aware of the point of taxation and the pre-launch booking advances were made as early as 2012, even if the amount were to be taxable under the Service Tax laws, the same ought to have been demanded within 5 years of receipt of such deposit and the same was time barred. Hence there could not be any demand of tax on the deposit received towards pre-launch booking for the very own reasons quoted by the DGAP above. Since there was no payment of Service Tax on this pre-launch deposit the question of availing ITC credit and the subsequent passing on the undue benefit profitability did not arise.

Anti-Profiteering clause came into effect in GST era

only. As this project Phase II commenced post GST the refundable deposit received by the Respondent could not be considered as "Consideration" as per CGST Act 2017 and hence could not be added for calculating the profiteering as per law.

g. That this Authority' order in the matter of M/s E-homes wherein Authority in his Order I.O. 07/2020 had directed the DGAP to consider two phases of the Project as different project. In I.O. 03/2020, in the matter of M/s Pivotal Infrastructures Pvt. Ltd., this Authority had directed the DGAP to investigate other projects under Rule 133(5) of the Rules. Similarly, in the matter of M/s Nani Resorts and Floriculture, M/s Friends Land Developers, M/s Emaar MGF, M/s Relationship Properties and other cases proper bifurcation of turnover and credit of each project had been used for determination of profiteering. The DGAP here was trying to mislead the Authority to the detriment of interest of builders and home-buyers alike by saying that the element of profiteering had been calculated in respect of phase I & II clubbed together following the procedure adopted by DGAP in all his cases in respect of construction sector and upheld by this Authority. In this regard, it was not only contrary to the directions of the Authority, but also went against the spirit of affidavits filed by the DGAP and the Authority before various judicial forums in similar cases where the Authority had filed affidavits that Credit of one project might not be clubbed with other project else it should jeopardize the interest of the

home-buyers of one project at the cost of benefit to the other. In this regard, the DGAP had deliberately chosen to overlook the bifurcation of ITC across the projects submitted vide email dated 24.12.2020 though the same had been made an annexure of Report of the DGAP. The Report of the DGAP had chosen to ignore the consolidated bifurcation of ITC for Pre-GST and Post-GST period across each phase, to inflate the alleged amount of benefit of Input Tax Credit.

The DGAP in his Report had also chosen to ignore the records of RERA whereby date of registration of each of the projects with RERA was mentioned clearly. Prior to implementation of RERA, there could be difference of opinion as to what should constitute initiation of a project but implementation of RERA, another central legislation which guided Real Estate Sector, and was implemented around the same time as GST had provided specific provisions for registration of all Real Estate Projects whether new or existing under different provisions. Phase II and III of the project were registered with RERA as a new project. Details of the project was as below:

Sl. No.	Project Phase	RERA Registration Details	Date of Approval as per RERA
1.	PURSUIT OF A RADICAL RHAPSODY PHASE 1	*PRM/KA/RERA/1251/446/P R/171014/000433*	14-10-2017 (Ongoing Project when RERA was implemented)

2.	PURSUIT OF A RADICAL RHAPSODY PHASE 2	*PRM/KA/RERA/1251/446 /P R/190102/002271*	02-01-2019 (New project post RERA implementation)
3.	PURSUIT OF A RADICAL RHAPSODY PHASE 3	*PRM/KA/RERA/1251/446 /P R/200817/003551*	17-08·2020 (New project post RERA implementation)

The DGAP in his investigation Report seemed to have been in hurry to have overlooked the fact that there was no purchase specific to the Phase II of the Project in the period July 2017 to January 2019 for any tower or villa of Phase II of the Project. Similarly, for Pre-GST period, there was no VAT credit for any of the Phases as these phases were not launched.

h. That there was no dispute as to Section 171 of the CGST Act, 2017 under which the action was taken here. The matter to be noted was in conformity in the action taken with law. Every transaction was important in a continuous supply of service. Only after the last stage billing the real profit could be arrived at for the purpose of anti-profiteering measures. The very basis for computation of profit here was the quantum of ITC passed on or not passed on. When the final quantum of credit itself was unknown during the course of continuous supply of service, the quantification of profit or ITC to customers was unfair and illogical.

i. That argument presented by the Respondent was not fully

considered by the DGAP while commenting. It was said by the DGAP that the cancelled booking and unsold units were not considered for computation of profiteering. The other argument was on the discounts which might be inevitable in future dates. It was normal practice that there might be discounts offered in future installments. This situation supported the stand of the Respondent that only on completion of supply, profit could be arrived at for the purpose of anti-profiteering action.

j. That no specific reasoning was given by the DGAP to follow the procedure of computation. Just because in the earlier cases it was upheld by this Authority did not absolve the DGAP from calculating the correct profiteering amount. Hence the DGAP's reply was not in tune with law.

k. That the DGAP had put the onus on the Authority, in objection as to how the amount of profiteering for the period subsequent to the period April 2020 should be determined. The methodology adopted by the DGAP was totally fallacious, inaccurate and misleading, and was already subject to challenge before various High Courts. There was no information in public domain regarding this methodology and when it had been notified. In absence of notification of this methodology no tax-payer might determine the actual amount of benefit that he might be required to pass on to his customers on his own, whereas the GST regime just like erstwhile Service Tax regime was based on self-assessment.

In absence of notification of methodology, the whole purpose of complaint-based investigation and State Level Screening Committee and Standing Committee on Anti-Profiteering was defeated, as the DGAP and the Authority would have to examine each and every real estate service provider. Even if the methodology were to be accepted, which the Respondent did not agree to, if for the period subsequent to April, 2020, the ratio of ITC to Turnover came lower than said ratio for the period April 2016 to June 2017, and the question that arose was whether he could collect such additional amount from the customers, for the said period.

31. The quasi-judicial proceedings in the matter could not be completed by the 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 quasi-judicial proceedings vide Order dated 23.03.2022 and hearing in the matter through Video Conferencing was scheduled to be held on 31.03.2022.

32. Therefore, hearing in the matter was held on 31.03.2022. Same was attended by Shri K Ramakrishna Bhat, Consultant for the Respondent and Shri Raminder Singh, Assistant Commissioner for the DGAP. Applicant No. 1 did not appear for the hearing. During the personal hearing the Respondent was heard. The Respondent has re-iterated his arguments based on his written submissions dated 15.02.2021 and 05.04.2021. The Respondent has accepted liability in respect of Phase I, wheresas contested the same in respect of Phase II. The

Respondent during the hearing further requested time to file his consolidated written submissions against the Report of the DGAP.

33. Further, the Respondent vide his email dated 01.04.2022 has filed his consolidated Written Submissions against the Report of the DGAP wherein he has submitted:

a. Architectural Plan wherein Phase-I and II are segregated.

b. List of pre GST depositors and amount collected in Phase-II.

c. Copies of receipt of advances for Phase-II.

d. RERA approval Certificates of Phase I and Phase II with application copies.

e. Copy of Form 4 Certificate in respect of Phase II as on 31.03.2019.

34. We have carefully considered the Reports filed by the DGAP, all the submissions and the documents placed on record, and the arguments advanced by the Respondent. The Authority finds that, the Respondent vide his submissions has contended that when the Applicant No. 1 had withdrawn his Application, it was incumbent upon the DGAP to close the investigation. In this regard, it is pertinent to mention that there is no provision envisaged under the CGST Act, 2017 or the Rules there under to drop verification/Investigation of profiteering once the Complainant/Applicant withdraws his complaint. The same analogy was being followed by the DGAP in all the cases and accordingly the investigation was continued once the recommendations of the State Screening Committee and Standing Committee were received. The Standing Committee had forwarded this case with the comments *"Prima facie evidence found. State Screening Committee*

had submitted reasoned Report. This complaint was being forwarded to the DGAP for further detailed investigation". Therefore, the contention of the Respondent to drop verification/investigation of profiteering after the withdrawal of Application by the Applicant No. 1 is not tenable.

35. The Authority finds that, vide the above said submissions the Respondent has also averred that the exact cost of the project could be arrived only after completion of the structure. As per the Respondent, as long as the transaction was alive and not finalised and the total price of the project could not be finalised and corresponding deduction in price could not be quantified. Further, the Respondent has also contended that the ITC was availed on the investment made by the Respondent and not of the Applicant No. 1 and the Respondent have to be given time to settle the benefit of ITC in final stages after correctly arriving at the exact figures. In this connection, the Authority finds that, the main contours of for passing on the benefits of reduction in the rate of tax and the benefit of ITC are enshrined in Section 171 (1) of the CGST Act, 2017 itself which states that *"Any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices."* The Respondent has got benefit of ITC which he was required to pass on. The ITC accrued on purchase of the material and the GST was payable on accrual basis and the project wise Cenvat / Input tax account was to be maintained by the builder under extant Rules pre / post GST. The Respondent could have passed on the benefit of ITC on provisional basis, which he

had not done. Therefore, the above submission of the Respondent is not sustainable.

36. The Authority finds on perusal of the records that, the Respondent had obtained approval on 19.10.2015 from the Joint Director Town Planning (North), Bruhat Bengaluru Mahanagar Palike i.e. the Competent Authority to grant such approvals (BBMP/ADDL DIRECTOR/JD NORTH/LP/0528/2013-14) before the enactment and enforcement of RERA for one Project viz. Pursuit of a Radical Rhapsody. The approved plans allowing land development and commencement of construction are on record. In the said plan as approved, there is no distinction between any three phases. On the other hand, the seven Towers from 1 to 7 have been designated as Wing 1 to Wing 7 of Building 1. It has been approved as one construction with all common amenities viz. connecting walkways, connecting bridges, connecting driveways, fire access driveways etc. by the then Competent Authority. It is this very same approved plan and project which has now after the enactment and enforcement of the RERA been bifurcated into Phase I and Phase II for the purpose of registration under the said Act. The Authority finds that, the Respondent has been obtaining amounts towards bookings of specific flats/apartments designated by specific flat/apartment numbers in the Tower numbered 5, 6 & 7. Such amounts have been procured/obtained prior to 1.07.2017 and prior to registration under the RERA either of the so called Phase I or Phase II.

37. The Authority finds that, the Respondent in their submissions have claimed that, Towers 1 to 4 are registered under the RERA as Phase I whereas Towers 5 to 7 have been registered under the

RERA as Phase II. Based on such separate registrations under the RERA, the Respondent claims that both phases be considered separately as separate Projects and cannot be clubbed. In addition, the Respondent has submitted that, the said Towers 5 to 7 registered as Phase II, commenced as a separate Project after 1.07.2017 and hence, the supply of construction services to recipients in relation to such Towers 5 to 7 is outside the ambit of any investigation relating to profiteering and does not fall under the purview of Section 171 of the CGST Act, 2017.

38. The Authority finds that, such submission of the Respondent is not evidenced by the facts on record. The record shows that, there was approval by the Competent Authority of one Project on 19.10.2015 i.e. Pursuit of a Radical Rhapsody. The conditions appended by the Competent Authority to the said Approval vide BBMP/ADDL DIRECTOR/JD NORTH/LP/0528/2013-14 dated 19.10.2015 also refer to the Building no. 1 with Wings 1 to 7 as a common structure. There was no demarcation of Phase I and Phase II therein. The approved Project had been approved inter alia for a Structure designated as Building no. 1 with Wing no.s 1 to 7 with all common amenities. Consequent to such approval, the land development and construction of the Project along with all the common amenities for the said Building no.1 consisting of seven wings or seven towers was commenced by the Respondent. It was in relation to the said Project as approved that the Respondent has been taking amounts towards bookings from flat/home buyers.

39. The Authority finds that, the Respondent has in their submissions dated 10.02.2021 claimed that the amounts collected before

1.07.2017, from various persons towards Flats/Homes in the proposed Phase II i.e. Towers 5 to 7 were Earnest Money Deposits which were refundable to the depositors and not amounts received toward provision of Construction Services in the proposed Phase II i.e. Towers 5 to 7. At Annexure III of the said submission dated 10.02.2021, the Respondent has tried to substantiate this argument by attaching a document of Pre launch booking offer to one Shri Mukesh Velji Shah. The Authority has perused the said document. The Authority finds that, the said document does not relate to any Project named Pursuit of a Radical Rhapsody in Bengaluru. On scrutiny, the said document appears to pertain to a Project named "Straight from the Heart" which required approval by "PMC" which presumably stands for Pune Municipal Corporation. The said document does not relate to the case under consideration. There is no such or similar document pertaining to the Project Pursuit of a Radical Rhapsody, submitted by the Respondent, during the investigation by the DGAP or during proceedings before this Authority.

40. The Authority finds that, the Respondent has in their submissions dated 1.04.2022 categorically stated that they had got approval of the Bruhat Bengaluru Mahanagar Palike (BBMP) for the entire Project i.e. Pursuit of a Radical Rhapsody. Such approved Project Plan has been submitted by the Respondent to KRERA after the enactment and enforcement of the RERA and is available online on the KRERA Website. Such Project Plan as approved does not show any demarcation between a Phase I and a Phase II. Rather, the Competent Authority had approved the Project Plan inter-alia for

Building no. 1 with Wings numbered from 1 to 7 which now the Respondent claims to be Towers numbered 1 to 7 in two Phases I and II.

41. On the facts and records as narrated above, the Authority finds that, the Project Pursuit of a Radical Rhapsody was approved prior to 1.07.2017 by the Competent Authority. The Authority finds that the Respondent has been taking bookings for specific units in the said Project. The Authority finds that the Respondent has taken amounts, prior to 1.07.2017, towards bookings of units in such Building no. 1 with Wings no.s 1 to 7 with all common amenities, which are part of such approved Project. Hence, the Authority holds that, for the purpose of this case before it, considering the unique facts as above, all the Wings numbered from 1 to 7 in the said Building no.1 as approved by the Competent Authority (which are now demarcated by the Respondent as Tower no. 1 to 7 in Phases I & II) have to be considered together for the purposes of Section 171 of the CGST Act, 2017 and determination of the profiteered amount. The Authority also finds that, the Respondent has obtained approval and begun rendering Construction Service to recipients for all such Wings numbered from 1 to 7 in the said Building no.1 as approved by the Competent Authority (which are now demarcated by the Respondent as Tower no. 1 to 7 in Phases I & II) prior to 1.07.2017. The Authority finds that, the amounts received by the Respondent from M/s Bennet Coleman & Co. Ltd. and Nagappa Pillappa were amounts received towards booking of specified Units/Homes/Flats in the Wings numbered from 1 to 7 in the said Building no.1 as approved by the Competent Authority (which are now demarcated

by the Respondent as Tower no. 1 to 7 in Phases I & II). This finding is also substantiated by the record at Annexure II and Annexure III of the submissions dated 1.04.2022 of the Respondent wherein receipts have attached of the TDS @ 1% received by the Respondent from their Customers as posted in the Respondent's Ledgers as well as the description of other receipts from such Customers as "Advance for Unit booking". Such receipts are prior to 1.07.2017 and towards Units in the Wings numbered from 5 to 7 in the said Building no.1 as approved by the Competent Authority (which are now demarcated by the Respondent as Tower no. 5 to 7 in Phase II). Hence, the Authority finds that, the basis of computation of profiteered amount by the DGAP is as per the record and correct.

42. The Respondent vide his submissions has also claimed that in the quarterly report of RERA furnished for both the phases the percentage completion consisted of proportion of land area and construction area and the split up are given in RERA Report. He has also stated that the allegation made by the DGAP that Phase II was started in pre-GST did not have any evidentiary value. The Respondent has also contended that the total amount received as on 30.06.2017 (pre GST) was not fully for the period of Service Tax regime and all the money received after 01.07.2017 (post GST) need not be the amount attributable to GST era. In this regard, the Authority finds that as per RERA Reports submitted by the Respondent for the quarter ending March, 2019, for Phase-I & II, the percentage of completion in respect of the on-going phase-I was 53% whereas in respect of Phase-II it was 29%. The percentage of

completion in both the cases included land portion also as submitted by the Respondent in his written submissions. However, the site preparation was a significant factor in the Construction Sector in as much as the construction work could not commence unless the land was made suitable for construction. Further, as seen from the Respondent's submission itself, it was evident that the Towers 5 to 7 and villas 50 to 64 belong to Phase-II and certain units had been sold in the pre GST period itself and certain amounts had been received (as per documents provided by the Respondent) which attract tax in as much as the said amount was with reference to provision of service at a later date. Accordingly, Phase II was considered for profiteering along with Phase I.

Further, the provisions envisaged under clause (b) of paragraph 5 of Schedule- II of the CGST Act, 2017 also mandate the same. Therefore, the averments made by the Respondent are not tenable.

43. The Respondent has also contended that the DGAP has assumed that the commencement of Phase II in the pre GST period. The Respondent stated that pre-launch bookings are not sales as indicated by the DGAP. For the pre-launch bookings the contract starts only after entering into an agreement for sale which was not entered in pre-GST era. The Respondent has also stated that all the 3 phases were different from one another, invoices were raised separately for the three phases and therefore the credit of one project may not be clubbed with the other project lest it jeopardises the interest of other home buyers. For this contention raised by the Respondent the Authority finds that Service Tax under the Finance Act, 1994 and GST under GST, Act, 2017 were charged on accrual

basis and hence as the demands were raised by the Respondent prior to GST period in respect of units of both Phase I & II and therefore tax was payable under the relevant law. Further, profiteering had been computed in respect of Phases I and II clubbed together for the above reason and therefore, the contentions raised by the Respondent are not maintainable.

44. The Respondent vide his submissions has stated that profiteering should only be considered in respect of Phase I which commenced prior to GST period. The Respondent vide his submission has also averred that Phase II and Phase III were commenced only after implementation of GST, whereas Phase I was commenced before GST era. If different towers were considered as one project, therefore, the credit of one phase if clubbed with that of other phase could jeopardize the interest of home buyers of one phase at the cost of another. If anyone raises demand from Phase II by erroneous calculation of adding Phase I it could not be justified. As per Respondent's calculation the profiteering amount appears to be Rs. 1,06,42,551/- and not Rs. 3,87,94,493/- as claimed by the DGAP. In this connection, the Authority finds that, Service Tax under the Finance Act, 1994 and GST under GST Act, 2017 are charged on accrual basis and therefore, tax was payable on the demands raised by the Respondent under the law. Once the expression of interest is offered to the homebuyer and the amount is received for provision of service at a later date, the amount received is taxable under the Finance Act, 1994 read with Point of Taxation Rules, 2011.

45. The Respondent has also claimed that in the absence of specific instructions, it was difficult to determine the benchmark pre-GST price for passing on the benefit by reduction in the prices. In this connection, the Authority finds that as per Section 171 (1) of the CGST Act, 2017 itself which states that *"Any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices."* The Respondent has got benefit of additional ITC which was required to passed on to the recipient of supply. The Authority finds that, the facts of each case are different so quantum of profiteering is determined by taking into account the particular facts of each case. The Authority finds that the additional ITC which has accrued to the Respondent on account of the implementation of the GST was required to be passed on to his customers. Therefore, in the light of the above, the contention of the Respondent is not tenable.

46. The Respondent has also submitted that the GST law provided for disallowance of ITC credit due to non-payment to the vendors within 180 days which might result in disallowance of ITC on the payments made to the sub-contractors. This clause in Section 16 of CGST Act, 2017 has no time limit fixed. In this regard, the Authority finds that the above averment made by the Respondent is untenable as the DGAP's Report is prepared under the mandate flowing from Section 171 of the CGST Act, 2017.

47. The Respondent has averred that cancellation of bookings after 1-2 years was a common event in real estate industry. Thus, issuance of credit notes on account of cancellation of contracts imposed a

challenge for tax adjustments and might increase tax burden and developer could not refund the tax amount to customers. In this regard, the Authority finds that the cancelled units and units sold post Occupancy Certificate have not been considered for calculation of profiteered amount by the DGAP in his Report. Therefore, the contention raised by the Respondent is not tenable.

48. The Respondent has also claimed that the taxable value did not synchronize in the same month or the same period. In this regard, the Authority finds that, the Report of the DGAP has been prepared and the computation of profiteered amount has been done on the basis of 'Procedure and Methodology' for passing on the benefits of reduction in the rate of tax and the benefit of ITC as enshrined in Section 171 (1) of the CGST Act, 2017. The same methodology has been by the DGAP in all its cases and upheld by this Authority in various orders passed by the Authority. Further, the Respondent has got benefit of ITC which he is required to pass on. It is also submitted that the additional ITC which has accrued to him on account of the implementation of the GST is required to be passed on to the customers, which he has not passed.

49. The Respondent has contended that only the Excise Duty on the goods purchased by the Respondent was not available as credit in pre-GST period and only the same should be considered as additional credit post-GST, in determination of profiteering. In this connection, the Authority finds that prior to 01.07.2017, 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 CENVAT Credit Rules, 2017, which was in force at the material

time. Further, the Respondent was paying VAT @ 14.50% on 70% of the construction value under Karnataka VAT Regular Scheme, he was eligible to avail ITC of GST paid on all the inputs and input services. Therefore, the ratio of ITC to turnover for the calculation of profiteered amount is based on ITC of Service Tax and VAT for pre GST period and ITC of GST for post GST period on the basis of information submitted by the Respondent for the period April, 2016 to April, 2020.

50. The Respondent vide his submission has also stated that he was yet to finalise the projects and high value goods and services were consumed only in the finishing stage of Construction Service. He has also submitted that each tower was launched at different point of time, pricing decisions of units in each tower varied from the previous one based upon a number of factors. The Respondent also relied upon this Authority's Order No. 59/2020 dated 31.08.2020 in case of Sri Venugopal Gella & Others vs. M/s Shapoorji Pallonji (Legal Name: Relationship Properties Pvt. Ltd.). In this regard, the Authority finds that, the Respondent has got benefit of ITC which he is required to pass on. The Authority finds that the facts of each case are different, so quantum of profiteering is determined by taking into account the particular facts of each case. Hence, there cannot be one-size-fits-all mathematical methodology. In one real estate project, date of start and completion of the project, price of the house/commercial unit, mode of payment of price, stage of completion of the project, timing of purchase of inputs, rates of taxes, amount of ITC availed, total saleable area, area sold and the taxable turnover realised before and after the GST implementation would always be different than those of the

other project and hence the amount of benefit of additional ITC to be passed on in respect of one project would not be similar to that of another project. Therefore, in the light of the above, the facts of the case law relied upon by the Respondent are different from his case and hence the averment made by the Respondent is not tenable.

51. It is clear from the plain reading of Section 171(1) that, it deals with two situations:- one relating to the passing on the benefit of reduction in the rate of tax and the second pertaining to the passing on the benefit of the ITC. On the issue of reduction in the tax rate, it is apparent from the DGAP's Report that there has been no reduction in the rate of tax in the post GST period. Hence, the only issue to be examined is as to whether there was any net benefit of ITC with the introduction of GST. The Authority finds 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 1.02%, whereas, during the post-GST period (July-2017 to April, 2020), it was 1.84%. This confirms that in the post-GST period, the Respondent has been benefited from additional ITC to the tune of 0.82% (1.84%-1.02%) of his turnover and the same is required to be passed on by him to the recipients of supply, including the Applicant No. 1. The Authority finds that the computation of the amount of ITC benefit to be passed on by the Respondent to the eligible recipients works out to Rs.3,87,94,493/-. The DGAP has calculated the amount of ITC benefit to be passed on to all the eligible recipients as Rs.3,87,94,493/- on the basis of the information supplied by the Respondent and hence the profiteered amount computed by the DGAP is hereby accepted as correct.

52. In view of the discussions above, the Authority finds that the Respondent has profiteered by an amount of Rs.3,87,94,493/- during the period of investigation i.e. 01.07.2017 to 30.04.2020 and determined the said amount under Rule 133(1) of the CGST Rules, 2017, the benefit of which has not been passed on to the recipients.

53. This Authority under Rule 133 (3) (a) of the CGST Rules, 2017 orders that the Respondent shall reduce the prices to be realized from the buyers of the flats commensurate with the benefit of ITC received by him, as has been detailed above.

54. We order that, the said amount of Rs.3,87,94,493/- (including 12% GST) that has been profiteered by the Respondent from his home buyers, including Applicant No. 1, shall be refunded by him, along with interest @18% thereon, from the date when the above amount was profiteered by him till the date of such payment, in accordance with the provisions of Rule 133 (3) (b) of the GCST Rules 2017 within a period of three months of from the date receipt of this order. The amounts to be refunded to each individual homebuyer is as per Annexure 'A' to this Order. Such amount shall be amount shall be refunded with appropriate interest @18% as ordered above.

55. The concerned jurisdictional CGST/SGST Commissioner is also directed to ensure compliance of this Order. It may be ensured that the benefit of ITC has been passed on to each homebuyer as per this Order along with interest @18%. In this regard an

advertisement of appropriate size (large enough to be noticed by the reader) 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 Total Environment Habitat Pvt. Ltd., Project- "Pursuit of a Radical Rhapsody", Location- Bengaluru, Karnataka and profiteered amount of Rs.3,87,94,493/- so that the concerned home buyers can claim the benefit of ITC if not passed on. Home/shop buyers 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 Officers who are nodal officers for compliance of the NAA's order may also be advertised through the said advertisement.

56. The concerned jurisdictional CGST/SGST Commissioner shall also 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.

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

58. A copy of this order be sent, free of cost, to the Applicant, the Respondent, Commissioners CGST/SGST Karnataka, the Principal Secretary (Town and Country Planning), Government of Karnataka as well as KRERA for necessary action.

59. Further, the Hon'ble Supreme Court, vide its Order dated

23.03.2020 in Suo moto Writ Petition (C) no. 3/2020, while taking *suo moto* cognizance of the situation arising on account of Covid-19 pandemic, has extended the period of limitations 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 of 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.

60. A copy of this order be supplied to the Applicants and the Respondent. File of the case 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

Encl: Annexure 'A' (page 1 to 14)

File No. 22011/NAA/11/Total Environment/2021 Date:-12.05.2022

Copy To:-

1. M/s. Total Environment Habitat Pvt. Ltd., 78, ITPL Main Road, EPIP Zone, Whitefield, Banglore-560066.
2. Shri Yogesh Sharma, A 603, Knightsbridge Apartments, ITPL Road, Brookefield, Kundalalhalli, Banglore-560037, Karnataka.
3. Directorate General of Anti-Profiteering, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, New Delhi-110001.
4. The Commissioner of State Tax, First Main Road, Gandhinagar, Bangalore-560009.
5. The Pr. Chief Commissioner, CGST, Bengaluru Zone, C.R. Building, Queen's Road, Shivaji Nagar, Bengaluru, Karnataka-560001.
6. The Chairman, Karnataka Real Estate Regulatory Authority, Real Estate Regulatory Authority Karnataka, 2nd floor, Silver Jubli Block, Unity Building, CSI Compound, 3rd Cross, Misson Road, Bengaluru, Karnataka 560027.
7. The Director of Town and Country Planning, Government of Karnataka, No 4, M. S. Building, 4th Floor, 6th Block, Near-Vidhana Soudha, Ambedkar Veedhi, Bengaluru, Karnataka 560001.
8. Guard File.

Annexure - 'A'

Sr. No.	Name of homebuyers	Unit No.	Profiteering amount
1	James Thomas Mannila	1101	44,595.53
2	Sumeet Chander & Ms. Nitika Bedi	1131	63,959.41
3	Manoj Goel & Mrs. Sareeta Goel	1111	75,774.99
4	Dheeraj Sood & Mrs. Shipra Sood	1122	64,830.50
5	Sunil Shirish Shah &	1212	77,748.34
6	Raviprasath Anbalan & Mrs Sushma Jy	1132	59,145.41
7	J & J Buying Services Pvt Ltd	2172	32,669.61
8	Liz Jacob	2142	31,283.92
9	Shivani Maheshwari	1151	40,276.33
10	Venkatapathy Raju	1121	*
11	Ramkumar Pavothil	2092	81,824.31
12	Reuben Kurien	1072	59,506.41
13	Mocherl Durga Ramesh Murthy &	1051	69,753.03
14	Mocherl Durga Ramesh Murthy &	1052	61,979.92
15	Mr. Gottipati Sunil Kumar &	1232	50,521.72
16	Dev Karan Ahuja &	1071	34,313.82
17	Aravinth Babu	1161	40,685.42
18	Aravinth Babu	1171	40,727.61
19	Bharat P Singh	1011	77,255.50
20	Bhartendu Sinha	1021	1,62,385.29
21	Vanita Viswanath	2131	45,025.31
22	Ganesh Vaidhyanathan	1042	66,925.54
23	Ranjit Nanda	1023	70,407.35
24	Rohit Kshetrapal	1181	*
25	Madhur Jain	1064	50,447.69
26	Alok Kumar	2074	*
27	John Kolathukalathil Punnoose	3211	*
28	Jaspreet Chadha	3151	*
29	Manish Gupta	1251	47,825.54
30	Suresh Kannan	2054	*
31	Shivani Maheshwari	1141	39,500.36
32	Raghavendra Bharadwaj	2262	1,43,114.08

33	Rohit Kumar	2032	1,33,205.83
34	Rajit Nanda	1024	65,498.73
35	Avijit Ghosh	1162	77,284.71
36	Sunil Gottipati	1222	68,767.60
37	Aryan Vangal	2024	49,606.69
38	Nagesh & Taruna Ayyagari	1031	1,36,325.80
39	Niket Kaisare	3152	20,298.31
40	Virendra Singh	1061	1,17,803.25
41	Raghavendra Bharadwaj	2112	1,57,858.40
42	Rojit Kshetrapal	1191	*
43	Anitha Grandhi	1231	1,37,923.52
44	Hariharan Raman	3162	*
45	Hemalatha Raghavendran	3142	17,523.88
46	Vadhiraj Jayanarasimhachar	2023	14,033.63
47	Vadhiraj Jayanarasimhachar	2033	14,033.63
48	Mukesh Velji Shah	1261	11,703.92
49	J.Sathyabama	2083	34,248.38
50	S.Sanjeevi & Mr.T.V.Ravi	2093	25,442.30
51	Balaji Rajagopalan	2064	19,371.56
52	Amit Zutshi & Mrs. Anita Mamidi	1172	55,064.87
53	Dhananjay Joshi	1084	66,517.18
54	Joshy Mathews	2044	22,238.59
55	P.S.Kesavan	1044	66,087.06
56	Kaushik Narayan	2104	21,736.53
57	Sreenivas Raju	2274	20,773.44
58	Natesan Sundaresan	2084	21,255.90
59	Malavika Sharma	1054	55,724.83
60	Supratik Majumder	1102	58,591.68
61	Madhusudana Rao	2034	*
62	Vivek Singhal	3122	0.01
63	Gopi Raj	1063	41,555.69
64	Munuswamy Thirupati	2264	21,285.25
65	H.M Keshav Reddy	4054	*

66	Sai Kumar	3131	*
67	Gerard S Chandran	2162	42,554.02
68	Naveen Yenmandra	1092	52,581.70
69	Priyatosh Ranjan	2343	22,074.07
70	Chintu Ramachandran	2244	41,164.10
71	T.R.Vishwanath	1083	82,271.00
72	Sujala Reddy S	4063	*
73	Dyuti Raj Anshu	1152	82,018.24
74	Venketeshwar Sharad	1034	75,173.42
75	Chandrashekar Raju	3083	*
76	Narasu Raju	4053	*
77	Anantha Raju	4103	*
78	Sujatha V	4314	*
79	Sunitha	3074	*
80	Geetha	3043	*
81	Sandeep Rammohan Koppikar	2013	38,980.53
82	Kuppamma	4074	*
83	Kuppamma	4083	*
84	Balaji K	2094	44,541.90
85	Krishna Raju	4114	*
86	Krishna Raju	3084	*
87	Santhosh Kumar	3113	*
88	Raghu K	3054	*
89	Krishnaveni	3073	*
90	Leela Umesh	4073	*
91	Santhosh Kumar	4043	*
92	Venkatamma	4033	*
93	Nirmala.K	3053	*
94	Santhosh Kumar	3044	*
95	Suma.K	3063	*
96	Santhosh Kumar	4313	*
97	Anand Kumar Chandrashekar	2181	65,733.30
98	Upendra	1112	51,390.58
99	Sumana Prabhakara	1223	89,277.13
100	Parveez Shaikh	2113	43,464.92
101	Ajay Sharma	1263	74,310.08
102	Sheila Kuruvilla & Anand Kuruvilla	2242	73,001.01
103	Venbakm C Gopalratnam	1013	59,134.36
104	Vani Ganapathy	18	70,116.90
105	Kiran Vaya	3161	21,540.02
106	Sandeep Devgan	2261	25,242.88

107	Nagarajan Ramakrishnan	2284	13,697.01
108	Dinesh Garg	1211	49,092.77
109	Aditya Saxena	2153	31,566.59
110	Aditya Saxena	2154	33,033.37
111	Aditya Saxena	2164	1,03,668.31
112	Krishna A	3252	23,620.52
113	Sheeja Cassius &	3013	*
114	Sheeja Cassius &	3123	*
115	Kishor Devchand Shah	20	24,674.39
116	Mukesh Velji Shah	21	24,495.64
117	Radha Vasudevan	3023	*
118	Nagappa Pillappa	7033	*
119	Ajay Goel	3034	8,498.42
120	Zaverchand Shah	22	24,674.39
121	Kishor Devchand Shah	23	24,495.64
122	Mukesh Velji Shah	1221	11,703.92
123	Mukesh Velji Shah	1262	20,876.22
124	Situl Shah	1201	11,703.92
125	Mukesh Velji Shah	2182	*
126	K Balasubramaniam	3033	*
127	Shreesh Kattepur & Lakshmi Kattepur	2114	77,079.26
128	Deepak Sabhnani and Suman Deepak Sa	3244	18,896.33
129	Anil Grover	3182	31,200.43
130	Amit Bordia	48	*
131	Mr. Sudarshan Bharadwaj Ms. Priya C	2234	41,032.43
132	Ms. Amrutha A Nair , Mr. Sajeev S A	1264	1,689.70
133	Mr Naren Dubey	3253	*
134	Mr Praveen Sampat	3234	*
135	Mr. Balaji Srinivasa, Ms. Sangita	3233	*
136	Mr. Ameen Ul Haque, Mrs. Vaishali	3243	*
137	Mr. Sumit Dhar, Mrs. Kavita Pajan	3254	*
138	Mr. Somil Kapadia, Mrs. Kokil Kapa	2073	46,768.84
139	Mr. Sivaram Nair A	2222	46,613.94
140	Mukesh Velji Shah	19	24,495.64
141	Mrs Poornima B R	1183	23,980.12
142	Mr Kiran Rego	3212	21,671.27
143	Mr Harsh Vardhan	1233	

			67,098.21
144	M/s. Bennet Coleman & Co Ltd	5243	*
145	M/s. Bennet Coleman & Co Ltd	5204	*
146	M/s. Bennet Coleman & Co Ltd	5193	*
147	M/s. Bennet Coleman & Co Ltd	6271	*
148	M/s. Bennet Coleman & Co Ltd	6272	*
149	M/s. Bennet Coleman & Co Ltd	5284	*
150	M/s. Bennet Coleman & Co Ltd	5214	*
151	M/s. Bennet Coleman & Co Ltd	5203	*
152	M/s. Bennet Coleman & Co Ltd	5244	*
153	Mr. Sundeep Bijlani	1184	80,275.30
154	Mr. SRIKAR REDDY PALEM	2052	*
155	Mr Srinivasa Madhur	2081	*
156	Bharat Prasad Sinha	1012	88,300.01
157	Vaibhav Khattri	2143	32,278.53
158	Subhankar Roy Chowdhury	14	*
159	Rajiv Agarwal & Mrs.Reema Agarwal	38	47,179.52
160	Rahul Agarwal	12	1,05,985.98
161	Girish V Menon & Mrs. Manju G	3222	27,516.92
162	Shailesh Agarwal	2251	56,125.34
163	Bamashish Paul	3242	*
164	Amar Babu Radhakrishnan	25	45,004.07
165	Debashis Biswas	1164	1,12,513.56
166	Sanjay Sahni	3064	*
167	Bhushan	1124	91,511.88
168	Anand Chandrasekhar and Archana A	3052	*
169	Suresh Rethinam	17	1,26,775.04
170	Subha Tata	2053	26,334.91
171	Archana Nair & Shashi Menon	1242	80,092.47
172	Mr Prakash Daga	1053	57,348.20
173	Ramasubramanian	2122	87,847.36
174	Vivek Kumar Arora	2063	58,744.19
175	Venkatesh Srikantan	4052	2,54,492.62
176	Berly Kurian	3232	25,774.18
177	Vinayraj Balkrishnan	2253	26,754.17
178	Pramod Kumar Sethi	3024	50,652.78
179	Sai Kumar and Puneeth K.	3141	71,543.99
180	Sachindra Nath	1043	1,18,275.71

181	Prathima Sharma	2132	22,563.87
182	Yogesh Sharma	1114	72,343.28
183	Vivek Sahasranaman	3132	18,665.64
184	Mr Vaibhav Gupta	11	*
185	Major P S Narayanaswamy and Prema	2124	20,569.30
186	Soumya Ghosh	2041	73,378.45
187	Prashant Kataria	2163	38,248.52
188	Srinivas	1154	91,618.91
189	Tripti Hemraj	1224	71,308.95
190	Arvind Nakre	2171	43,476.73
191	Prasad Setty	7	79,506.61
192	Alok Mehta	2051	41,275.38
193	Kashibhat Ramachander Nikhilender	3183	87,043.26
194	Dinker Charak	1192	1,22,492.33
195	Laxminarayana Garimella	2014	34,610.69
196	Soumya Ghosh	2042	73,378.45
197	Vivek Janardanan	3124	33,437.28
198	Rajagopal Venkata Maradana	2232	2,11,190.85
199	Mr Mr. Ramani Iyer	1104	1,03,152.77
200	Vijay Thiruvallur	1204	46,017.77
201	Srinath Reddy	3093	57,060.00
202	Sunitha & Markus	2273	99,782.59
203	Reema & Arun Prasath	1174	1,25,590.25
204	Venkata Ramesh Babu Chennareddy	1144	84,796.05
205	Anuradha Sharma & Rahul Nanda	1182	73,185.26
206	Mr Charanjit Arora	1194	1,67,578.04
207	Vijay Menon	1103	1,32,081.22
208	Sutanu Bhowmick & Mrs. Roopa Bhowm	1173	1,96,152.37
209	Sambit Dikshit and Ilima Mishra	2184	1,69,495.28
210	Soumya Simanta & Mrs. Sanghamitra M	2123	1,70,369.48
211	Manish Kumar	3112	1,41,507.33
212	Vivek Sinha	1014	68,063.99

213	Mukta Sharma & Rajiv Sharma	3094	94,298.65
214	Pankaj Rahul Singh & Mrs. Neetu Pan	1203	1,73,139.88
215	Rita Margaret	3014	61,866.31
216	Vijay Jacob	4244	1,35,859.90
217	Seema Shukla	4104	1,40,352.99
218	Subodh Dhakad	4254	1,20,637.55
219	Tina Rathi	4263	1,38,909.09
220	Amit Gupta	4123	1,33,954.62
221	Srikanth Sankaran	4203	1,24,062.45
222	Subasish Mohapatra	4014	1,49,479.24
223	Dev Karan Ahuja	4013	1,49,351.96
224	Lakshmi Narasimhan Santhanam	3223	84,412.13
225	Kumanan Rajagopal	3104	84,397.31
226	Gaurav Dabur	4213	1,23,375.03
227	Shaukeen Pathak	4163	1,26,819.25
228	Prakash Channapagoudar	1241	1,08,793.78
229	Sangit Gopinath	4084	1,35,783.46
230	Subhrendu Sarkar	4264	1,19,939.87
231	Manish Kumar Poddar	2173	1,26,881.86
232	Manish Kumar Poddar	1254	1,30,295.72
233	Manish Kumar Poddar	2183	1,34,344.23
234	Narendra Kumar Sirugudi	3042	1,23,084.56
235	Krishnenjit Roy	3214	82,043.40
236	Chandan	4194	94,037.60
237	Varun Dhussa	4183	96,889.95
238	Shailesh Sultania	4153	94,037.60
239	Prakash Sikaria	2111	1,78,808.29
240	Girish Vishwanath	1234	1,75,266.02
241	Aditi	4193	73,140.35
242	Sunkari Sasidhar	3173	94,037.60
243	Rajesh Mehrotra	4143	1,11,093.82
244	Dashak Agarwal	3194	

			91,901.33
245	Nitin Suvarna	4184	1,11,093.82
246	Raju A K	3174	83,588.97
247	Sanjeev Somasundaram	3203	1,11,397.69
248	Navdeep Mer	3114	1,06,663.29
249	SUNIL NAIR	3231	1,50,528.42
250	Amit Talwar	3111	1,46,297.69
251	Tanija and Suman	3264	99,730.71
252	Heera Ganjikota	1032	1,37,906.37
253	Neha Ashu Kulkarni	3164	96,889.95
254	Amit Kumar Kansal	4204	1,19,809.87
255	Sukesh S K Nair, Dhanya S Nair	3163	96,889.95
256	Nagaraj Reddy	4113	94,037.60
257	Swati Barman	3191	1,47,989.99
258	Anish Reddy Koduru	4154	1,12,323.85
259	Smitha V, Suhas S	4064	94,049.15
260	Isha Sandhu, Raj Mohinder Singh San	4134	1,14,934.85
261	Amit Chowdhury	4024	1,13,934.61
262	Neeraj Harlalka	4034	1,19,795.73
263	Neeraj Harlalka	4044	1,23,281.93
264	Madhukar Kesa	3193	1,22,476.97
265	Sangamesh Birader	3204	96,889.94
266	Jyoti Kalapalli Plappara	3184	96,889.95
267	Anup Nangalia	4093	84,038.07
268	Parul Goel and Bhupendra Wakankar	4233	98,014.69
269	Fatima Sami, Ankur Sureka	3192	1,52,897.63
270	Saikumar Shamanna, Padma Priyadarsh	1134	1,48,142.73
271	Akarsh Sudarshan	2022	2,32,742.59
272	Divyanshu Yadav	4234	1,18,406.92
273	Antonisamy and Arokiasamy	9	2,90,662.30
274	Navin Prabhakar	7063	1,32,974.30
275	Sudharshan	7122	1,15,230.90

276	Sesha Talluri	7184	1,29,186.58
277	Ketan Jogani	7194	1,04,486.22
278	Prateek	7174	1,04,486.22
279	Dileep Kumar	7163	11,554.66
280	Garima Joshi	7202	1,55,685.11
281	Bharath K. Reddy, Kavery Singh Mank	7182	1,23,838.34
282	Prem Tilak	7192	1,10,799.06
283	Vipul Sachdeva	7102	1,25,398.89
284	Srinath Sinha, Urmi Sinha	7073	1,04,486.22
285	Debnath Sinha, Urmi Sinha	7074	1,01,329.63
286	Shailendra Pratap Singh	7263	78,039.64
287	Shrikant Daigavane	7104	1,20,615.83
288	Binu Abraham	2133	1,34,756.44
289	Jayadeep Jayaraman,Smrila Jayadeep	7172	1,10,799.06
290	Ashwini Koti Siddhi, Abhik Shome	7242	1,18,374.69
291	Meena Prabhakar	7103	*
292	Pavani Marpuri, Sriram Marpuri	4243	1,23,268.01
293	Pavan Palety	7253	75,994.30
294	Mrs Neha Gupta	7152	1,33,638.44
295	MADHULOKA LIQUOR BOUTIQUE PRIVATE L	4182	1,52,197.60
296	N Shahin Sharma, Anup Sharma	7132	1,27,051.33
297	Satish Rudrappa	10	4,14,848.73
298	Ponnu Kailasam	4023	1,00,867.02
299	Nikhil Puri	7093	1,04,486.23
300	Maheshwaran Krishnan	7154	1,12,210.20
301	Rajalakshmi Padmanaban, Vijay Ferna	7081	1,14,948.98
302	Varun Vaitheeswaran	7183	1,56,079.27
303	Maninder Singh	7123	1,42,958.65
304	Animesh Raizada,Shilpi Raizada	7143	1,31,012.99
305	Rahul Chakrabarty, Ranjita Ghosh	7203	1,49,280.47
306	Ranganath Ananth, Varsha Ranganath	3224	1,15,070.92
307	Ritu Nayak, Niraj Nanavaty	7173	1,39,019.21

308	Ajit Kumar Kokkeri, Sapna Ajit	7053	1,34,787.85
309	Suraj Kumar, Divya Malpe	4192	1,87,081.71
310	Shrimn Nishit, Sanghamitra Bhargov	7083	1,15,862.17
311	Bimal Cyriac	7232	1,61,745.44
312	Biju Aliyas	7191	1,29,851.39
313	Jacob Thomas	7013	99,952.85
314	Sriram Gopalakrishnan	7142	1,29,056.01
315	Niroop G Janardhanan, Ninee Rao	7153	1,39,019.21
316	Govindappa Shankar, Latha Shankar	7043	1,35,029.45
317	Vijay Bright	4133	98,582.84
318	Anand Iyer, Shruthi Athreya	6073	1,28,475.01
319	Preeti Kaushik, Nikhil Goel	7162	1,19,018.60
320	Abhinav Srivastava	3143	1,15,639.07
321	Jayaram Karthik	6043	1,51,752.83
322	Deepak Goil, Archana Goil	6183	1,34,800.69
323	Arun Kumar Dutta	6063	1,15,456.66
324	Debanjali Sengupta, Vikram Sengupta	6174	1,08,905.22
325	Debanjali Sengupta, Vikram Sengupta	6173	1,24,687.32
326	Anjani Vijay Kumar and Rohit Kumar	7092	52,642.16
327	RAMANAN	7113	1,35,419.15
328	VENKATESWARLU BHAMIDIPATI	7084	1,14,157.71
329	LAKSHMI NARAYANAN, PRABHA	6084	1,30,381.71
330	CHIRAG YADAV, GAYATRI MUR	7061	1,08,286.77
331	MINI NARAYANAN, DILIP KUM	3121	84,042.84
332	MR. BAVAN KOSHY MATHEWS	7112	1,15,849.34
333	VINOD KUMAR PANDURANGAN	7052	1,16,480.62
334	AUROBIND RATH & RANJITA D	3092	1,89,183.80
335	SAPTHAGIRINATH K , DIVYA	6083	1,19,649.89
336	VINOD KUMAR	6092	2,16,399.63
337	HARDEV ATWAL	1073	1,40,288.73
338	JOHN KURIAN	3202	1,62,351.34
339	ASHWINI NARAYANAN	6104	

			1,43,419.88
340	SYAMA SUNDARARAO NANDIMIN	7252	1,22,793.47
341	MR. VIVEK VENKATESWAR AND	7222	1,41,744.82
342	VIRENDER DAGAR	6074	1,36,746.58
343	SABEESH BALAGANGADHARAN,	4042	2,24,986.90
344	ABHISHEK UDAYA CHANDRA	7204	1,44,337.41
345	ADITYA SONI	6143	1,22,806.31
346	Mrs Meena Sai	3272	*
347	C. REVATHI, A. KIRTHANA	1113	44,794.23
348	ARUNIMMA JOHAARI	7082	1,19,103.28
349	ANISH KARTHA	4173	1,08,615.69
350	DR. KAILASH SUBBAIAH MOTT	7101	1,34,489.38
351	BIJU MATHEW & CIJEY BIJU	6053	1,03,528.34
352	RAM MOHAN NAYANI	4191	1,58,984.88
353	RAMKUMAR RAMAKRISHNAN	3153	1,01,917.71
354	ASHOK MUTHAYAL	3103	1,24,323.54
355	BHASKAR RASTOGI	4262	1,23,851.73
356	HIRENDRA ASSUDANI, RAKA	1091	2,29,450.44
357	M/S VIJAY BANSAL HUF	4124	43,568.46
358	M/S VIJAY BANSAL HUF	4094	43,568.46
359	MANISHA SHARMA GHOSH AND	6163	1,22,806.29
360	MANJUNATHA DEVADIGA, MEGH	6134	*
361	MANOJ OOMMEN KUNJUMMEN AN	7072	1,27,747.25
362	MR. RAJKUMAR SOUNDARAPAND	4032	1,36,549.48
363	MS. SWAPNIL SINGH CHAUHAN	4164	1,28,142.82
364	PRADEEP KARTHIKEYAN PANIC	6013	1,61,613.91
365	PRADEEP SINGH	4152	2,19,141.22
366	RABISANKAR PANIGRAHI, SUJ	6014	1,58,191.87
367	RG INSURANCE PROCESSING S	47	31,644.46
368	ROOPA RAJESH AND RAJESH K	6223	1,52,794.44
369	SONAL KHANDUJA	7064	1,40,549.70
370	SOUMITRA SANA	1202	54,995.35
371	SRIDHAR BALASUBRAMANIAN	6203	

			1,63,654.68
372	SUBHASH CHANDRA SHARMA, R	2233	71,547.72
373	SUDEEP RALHAN	1082	1,59,648.19
374	SWATI GARADI PATEL	1123	1,02,283.77
375	TRIPURESWAR CHATTOPADHAYA	7091	1,26,833.89
376	UMESH SACHDEV	2121	81,895.60
377	VAISHNAVI VENKATARAMAN, G	7243	1,64,987.95
378	VENKATESH SRINIVASAN	3261	2,29,454.74
379	VIJAY YEDAVALLI AND SNIGD	4253	1,45,489.00
380	ZOEB MERCHANT	4122	1,83,504.97
381	NIRANJAN NAGARJAN AND ISH	4151	1,93,286.78
382	SHYAM BHAT	7181	1,57,215.60
383	VENKATRAMAN NAGANATHAN, A	7223	1,48,503.86
384	ABHISHEK KUMAR SINGH	6023	1,52,030.61
385	ALUMOOTIL SAJU GEORGE AND	4242	3,16,947.43
386	AMAR	1193	1,48,048.29
387	ANKITA AGARWAL & RIJU THO	4171	1,54,067.44
388	ANURADHA MENON & P RADHA	2043	72,303.66
389	ARCHANA YOGESH PANT AND Y	4121	1,58,031.85
390	CAPT .PRAVEEN KARKADA	3181	1,62,351.34
391	DHARASHREE PANDA & KARTI	4202	1,83,504.97
392	DIMITROV KRISHNAN & ABIJ	6024	1,55,919.28
393	DINESH NARAYANAN NAIR	6044	1,51,155.28
394	DINESH NARAYANAN NAIR & M	7062	1,32,216.75
395	GERALD ANTONY PRABHU AND	3134	1,24,656.62
396	KALYAN SRIDHAR, UMA SRIDH	2174	1,64,555.51
397	KAMALESH KASALA AND POOJA	3263	1,05,713.40
398	KUNAL CHAUHAN	7171	1,29,928.69
399	MANAV KAMBOJ	7241	1,30,226.04
400	MAYANK CHOUDHARY AND AMRI	6243	1,38,558.99
401	MR. ARJUN K V AND MS. SOW	7134	1,35,989.05
402	MR. BHANU RAO JASTI AND M	6124	1,31,213.76

403	MS. ARATI KUMAR & MR. AR	1074	1,69,918.82
404	MUTHUKUMAR RAMGOPAL & YAM	4224	1,07,684.89
405	NIKHIL GUPTA	7121	1,49,139.08
406	P K DAVISON & MEENA MATHE	2103	1,42,031.04
407	PRABHAT KUMAR DHANDHANIA	4214	1,03,736.16
408	PRADIP KUMAR	4212	98,180.50
409	PRAJWAL CHINTA & SUMANA T	7111	1,00,855.46
410	PRIYANKA SINHA SUDARSHAN	4144	1,02,929.41
411	RAM DARASH YADAV & PREMA	4222	1,70,708.39
412	RANGITH RAMACHANDRAN AND	7164	1,01,537.50
413	RAVI UPADHYAY & NEHA KUMA	7071	12,084.36
414	REHANA PARVEEN, ASIF HUSS	3154	1,40,878.09
415	RISHI NAYAR, DAYAVANTI KA	3172	1,79,297.36
416	SALONA SINHA & ROHIT VERM	7012	1,63,257.98
417	SANDEEP SURI AND RAJNI SU	3144	80,455.60
418	SANJEEV KUMAR S DUDHAIYA	6064	1,23,601.34
419	SANTOSH KUMAR SINGH	7212	1,35,072.82
420	SIDDARTH	6113	1,50,286.92
421	SRINIVAS MADDALI & PREETI	6133	1,33,361.29
422	SRINIVASA GUPTA CHEEDELLA	4223	1,31,614.85
423	SUMANTH PUTTUR, SHUBHASHR	7161	1,26,754.00
424	SUMIT KUMAR BOHRA & DISHA	6114	1,31,600.74
425	THIRUMALA REDDY PEDDIREDD	7094	1,25,351.04
426	VISHNU RAJEEV NAIR	7262	1,70,093.79
427	VIVEKANAND JHA	16	4,60,645.86
428	ABHA MAHAVIR JOSHI AND SA	3032	62,657.86
429	ADITYA JAIN & GARIMA JAIN	6153	12,280.64
430	DEEPAK MUNGLA	3171	1,58,143.73
431	DEVIPRASAD SHETTY AND MAD	2263	1,79,726.07
432	DIPTANIL SAHA AND ANIYA S	4252	*
433	JAYANTHI RAMESH, ANANTHAK	4142	18,039.04
434	KISHORE NANDAKUMAR	6204	1,52,447.24

435	KISHORE SRINIVASANIRMALA	4162	1,98,326.00
436	MANISHA CHATURVEDI & RANJ	7103	1,31,614.87
437	MATHEWCHACKO	7011	1,48,248.98
438	MRINAL SHARMA	4201	1,62,351.34
439	NEHA AGARWAL & RISHU AGGA	7023	*
440	NISHANTH N, MANISHA MASOO	3274	1,45,488.97
441	PRANAY BEHERA	7233	*
442	RAHUL KUMAR GUPTA & CHAND	6233	12,408.79
443	SATISH P S	4022	*
444	SRAVAN KUMAR PABBISETTY &	7133	11,691.87
445	YOGESH AGARWAL, REKHA AGA	1093	1,57,406.86
446	APURV GUPTA & CHARU GUPTA	6	4,586.15
447	MRS USHA AGARWAL & MR VIN	15	35,240.20
448	SNEH LATA	1081	*
	Total Profiteering amount		**Rs. 3,87,94,493.30/-**

* :- No amount indicated in the DGAP's report dated 27.11.2020 (Annexure-29)