

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

Case No. 27/2022
Date of Institution 29.01.2021
Date of Order 24.06.2022

In the matter of:

1. Sh. Ashok Kumar Singh, 633/159, Gulzar Colony, Near Ayodhya Singh Inter College, Chinhath Tiraha, Lucknow- 227105.
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 Lifeways Infrastate Pvt Ltd, Raja Ram Kumar Plaza-75, Hazratganj, Lucknow-226001.

Respondent

Quorum:-

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

Present: -

1. None for the Applicant No 1.
2. None for the Applicant No 2.
3. None for the Respondent.

ORDER

1. The National Anti-Profiteering Authority (NAA) vide Interim Order No. 34/2020 dated 11.12.2020 in this matter has given the following order:-
 - i. *"It is observed that the above provision of the RERA Act, 2016 makes it mandatory for a real estate developer/promoter to maintain separate bank accounts for each of his projects registered separately under the RERA Act, 2016. In the case of the Respondent, the above provision implies that he was*



required to maintain four separate escrow/bank accounts in respect of the four towers/blocks of the project "Celebrity Gardens", however the DGAP's Report had no mention of this aspect. It had a bearing on the instant proceedings since the DGAP's Report dated 23.03.2020 only covers one of the four blocks i.e. Block 'K'. As the Respondent had obtained four separate RERA registrations for his four blocks/towers, he should have maintained separate escrow/bank accounts. In case the Respondent had not complied with the above-mentioned provision of the RERA Act, 2016, then the entire project "Celebrity Gardens" comprising all his blocks/towers, should be considered as a single project for the computation of profiteering, given that the Respondent had been maintaining a common ITC register/ITC ledger for all the blocks of his said project and had been filing common GST Returns for all the blocks/towers of the said project "Celebrity Gardens". Hence, the compliance of the Respondent with the above-referred provisions of the RERA Act, 2016, becomes paramount and need to be examined. In view of this, there arises the need to revisit the investigation to ascertain if the Respondent had passed on the benefit of ITC to the homebuyers of the other 3 towers/blocks of the impugned project by a commensurate reduction in the prices of the residential units supplied by him in terms of Section 171 of the CGST Act, 2017.

- ii. Further, we also find that there is a significant variation in the figures adopted by the DGAP in Table-'B' in his Report dated 23.03.2020 vis-à-vis the figures mentioned in the statutory tax returns filed by the Respondent, i.e. the figures of ITC and turnover for the period from 01.04.2016 to 30.06.2017 and the post-GST period from 01.07.2017 to 30.09.2019. The said variation in the two sets of figures of ITC and turnover was detailed in the Table below: -

Table

Period	Turnover as per DGAP's Report (Table-B)(L)	Turnover as per Returns (M)	Difference (N=M-L)
Pre-GST from 01.04.2016 to 30.06.2017	4,29,06,293	6,72,15,874	2,43,09,581
Post-GST from 01.07.2017 to 30.09.2019	8,10,23,545	9,05,36,894	95,13,349

Period	ITC as per DGAP's Report (Table-B)(L)	ITC as per Returns (M)	Difference (N=M-L)
Pre-GST from 01.04.2016 to 30.06.2017	2,55,624	11,62,346	9,06,722
Post-GST from 01.07.2017 to 30.09.2019	5,08,131	75,09,076	70,00,945

Given the above variations in the figures of Turnovers and ITC's we find the need for an investigation into this aspect to ensure that the Respondent had passed on the benefit of ITC."

The above said order of the NAA was not challenged by any party on the direction of methodology for working out the profiteered amount in the instant matter; hence, the said direction of methodology in the instant case becomes final."

2. The brief facts of the case have been mentioned in the NAA Internal Order No. 34/2020 dated 11.12.2020 and the same is summarized below:
- a) A Report dated 23.03.2020, has been received on 16.04.2020 from 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 an application was filed by Applicant No. 1 before the Standing Committee on Anti-profiteering, under Rule 128 of the CGST Rules, 2017, alleging that the Respondent had not passed on the benefit of input tax credit (ITC) to him by way of commensurate reduction in the price of the Flat No. K-904 purchased from the Respondent in the project "Celebrity Garden Block-K", situated at Raja Ram Kumar Plaza-75, Hazratganj, Lucknow-226001 on the introduction of GST w.e.f. 01.07.2017, in terms of Section 171 of the CGST Act, 2017. The Standing Committee on Anti-profiteering examined the above application in its meeting held on 13.09.2019 and forwarded the same to the DGAP to conduct a detailed investigation in the matter.
 - b) The DGAP has examined the above application, the replies of the Respondent and the documents/evidence on record. The main issues for determination were whether there was the benefit of reduction in the rate of tax or ITC on the supply of construction service after the implementation of GST w.e.f. 01.07.2017 and if so, whether such benefit had been passed on by the Respondent to his recipients by way of commensurate reduction in prices, in terms of Section 171 of the CGST Act, 2017.
 - c) From the data submitted by the Respondent covering the period April 2016 to September 2019, like the details of the ITC availed by him, the turnovers from the project "Celebrity Garden Block-K", the ratios of ITCs to turnovers during the pre-GST (April 2016 to June 2017) and post-GST (July 2017 to September 2019) periods was calculated, which have been furnished in Table-B below:-

Table-'B'

(Amount in Rs.)

Particulars for the project "Celebrity Garden Block-K"				
S. No.	Particulars	Total (Pre-GST) April 2016 to June 2017	Taxable Turnover from July 2017 to September 2019	Total (Post-GST)
1	CENVAT of Service Tax Paid on Input Services used (A)	2,55,624	-	-
2	ITC of VAT Paid on		-	-

	Purchase of Inputs (B)			
3	Total CENVAT/ITC Available (C)= (A+B)	2,55,624	-	-
4	ITC of GST Availed (D)	-	5,08,131	5,08,131
5	Turnover for as per Home Buyers List (E)	4,29,06,293	8,10,23,545	8,10,23,545
6	Total Saleable Carpet Area (in SQF) (F)	91,010		91,010
7	Total Sold Carpet Area (in SQF) relevant to turnover (G)	47,875		69,695
8	Relevant ITC [(H)= (C)*(G)/(F) or (D)*(G)/(F)]	1,34,468		3,89,124
	Ratio of ITC Pre/Post-GST [(I)=(H)/(E)]	0.31%		0.48%

From the above table, the DGAP has observed that the Respondent had been benefitted from additional Input Tax Credit to the tune of 0.17% of the turnover.

- d) Based on the figures contained in the Table "B", the comparative figures of the ratios of ITC availed/available to the turnovers in the pre-GST and post-GST periods as well as the turnovers, the recalibrated base price and profiteering during the post GST period was worked out and the same has been tabulated in table-C below:-

Table-C

(Amount in Rs.)

Sr. No.	Particulars for the project "Celebrity Garden Block-K"		
1	Period	A	July 2017 to September 2019
2	Output GST rate (%)	B	12
3	Ratio of CENVAT credit/ ITC to Total Turnover as per table - 'B' above (%)	C	0.17%
4	Increase in ITC availed post-GST (%)	D= 0.48% less 0.31%	0.17%
5	Analysis of Increase in ITC:		
6	Base Price raised during July, 2017 to June, 2019 (Rs.)	E	8,10,23,545
7	GST raised over Base Price (Rs.)	F= E*B	97,22,825
8	Total Demand raised	G=E+F	9,07,46,370
9	Recalibrated Base Price	H= E*(1-D) or 99.83% of E	8,08,85,805
10	GST @12%	I = H* B	97,06,297
11	Commensurate demand price	J = H+I	9,05,92,102
12	Excess Collection of Demand or Profiteering Amount	K= G-J	1,54,269

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From the above calculation explained in Table –C, it emerged that during the period 01.07.2017 to 30.09.2019, the benefit of ITC that needed to be passed on by the Respondent to the buyers of flats came to Rs. 1,54,269/- which included 12% GST on the base amount of Rs. 137,740/-.

- e) However, the Authority after considering the various submissions made by the Respondent & the DGAP report, vide its Internal Order No. 34/2020 dated 11.12.2020, referred the matter back to the DGAP and directed to further investigate the present case under Rule 133(4) of the CGST Rules,2017as per the Para1 on pre-page.
3. Accordingly, the DGAP has carried out necessary re-investigation and on conclusion of the same, a report dated 28.01.2020 was sent to the NAA under Rule 133 (4) of the CGST Rules, 2017.The Report dated 28.01.2021, inter-alia contained as under:-
- a) The Respondent, with reference to para-18 of the Authority Internal Order No. 34/2020 dated 11.10.2020, informed that in pre-GST period from 01.04.2016 to 30.06.2017, there were only three returns of Service tax and total Turnover and Cenvat of the three returns for the period was Rs. 5,79,03,391/- & Rs. 4,31,790/- respectively. The Respondent enclosed the copies of relevant portion of the Service Tax Returns for ready reference and also informed that with respect to post-GST period 01.07.2017 to 30.09.2019, there was in total 28 Returns and the Turnover and ITC was Rs. 10,28,42,414/- & Rs. 1,01,62,617/- respectively. The turnover or Cenvat/Input tax credit given reflects the turnover/Cenvat/Input Tax Credit of particular (availed during the month) months only.
- b) As regard to maintenance of separate bank accounts for each of his project registered separately under RERA Act, 2016, the DGAP has clarified that the Respondent has submitted the project wise details of Bank name along with the Bank Account Number as the detailed are given below:-

Sr. No.	Collection Block	Bank Name	Address	Account No.
A	B	C	D	E
1	Collection Block J	Indian Bank	1-2 , Ashok Marg , Lucknow - 226001	6719493677
2	Collection Block K	Indian Bank	1-2 , Ashok Marg , Lucknow - 226001	6719493779
3	Collection Block N	Indian Bank	1-2 , Ashok Marg , Lucknow - 226001	6719493815
4	Collection Block P	Indian Bank	1-2 , Ashok Marg , Lucknow - 226001	6719493837

It was observed by the DGAP that the Respondent had maintained separate bank accounts for each of his blocks/projects registered separately under the RERA Act, 2016. Thus, the requirement of maintaining separate bank accounts for all the four blocks/project wise, under the RERA Act, 2016 had been fulfilled by the Respondent. Consequently, the four blocks/project "Celebrity Garden" cannot be considered as a single project for the computation of profiteering. Therefore, there was no change in the Investigation Report dated 23.03.2020.

- c) As regard to significant variation in the figures adopted by the DGAP in Table "B", the Respondent has submitted the details of turnover and Cenvat/ITC for pre and post GST. The turnover/CENVAT/ITC details submitted was given in table below:-

Period	Turnover as per DGAP Report dated 23.03.2020 for the Project-K	Turnover as per Service Tax/GST Returns	Turnover for the Project-Celebrity Garden J,N & P
Pre-GST from 01.04.2016 to 30.06.2017	4,29,06,293	5,79,03,391	1,49,97,098
Post GST from 01.07.2017 to 30.09.2019	8,10,23,545	10,28,42,414	2,18,18,869

Period	CENVAT/ITC as per DGAP Report dated 23.03.2020 for the Project-K	CENVAT/ITC as per Service Tax/GST Returns	CENVAT/ITC for the Project-Celebrity Garden J,N & P
Pre-GST from 01.04.2016 to 30.06.2017	2,55,624	4,31,790	1,76,166
Post GST from 01.07.2017 to 30.09.2019	5,08,131	1,01,62,617	96,54,486

It was observed by DGAP that there were altogether 4 projects of the Respondent and all was separately registered under RERA. The CENVAT/ITC as well as the turnover during the pre-GST/ post-GST period given in the Statutory Returns (Service Tax/GSTR 3B) pertains to all the four Blocks of the project "Celebrity Garden". Therefore, the turnover given in the Returns would not match with the turnover calculated in the Investigation Report dated 23.03.2020 of DGAP as the turnover considered by DGAP pertains to demand raised for the block "K" of the project "Celebrity Garden" only, whereas the Turnover given in the Returns represents all the 4 blocks. Similarly, the CENVAT/ITC taken in the Returns would also not match with Investigation Report dated 23.03.2020.

- d) The DGAP concluded that there was no change in the amount of profiteering of Rs. 1,54,269/- as was reported in DGAP's Investigation Report dated 23.03.2020.
4. A copy of the investigation report dated 28.01.2021 was provided to the Respondent and to the Applicant No. 1 as per the Minutes of the Meeting of Authority held on 03.02.2021 and as conveyed vide letter dated 04.02.2021. The Respondent vide E-mail dated 12.03.2021 submitted that they had produced their documents and records as and when required by the office of DGAP and an amount of Rs. 1,54,269/- that was ascertain finally as profiteering, had been paid by them to their customers after accepting the same. However, the Applicant No. 1 did not submit any submissions against the DGAP's report.
5. The 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 the minimum quorum was restored only w.e.f. 23.02.2022. The matter was taken up for further proceedings vide Order dated 23.03.2022 by which the DGAP was directed to submit verification report to the effect that the benefit of ITC was actually passed on to the eligible buyers as the Respondent vide his letters dated 15.02.2021 and 18.03.2021 had admitted to have profited and had thus passed on an amount of Rs.1,54,269/-. The DGAP has submitted his verification report on 27.04.2022 stating that the Respondent had provided 12 Email id's out of total 40 buyers. Further, the DGAP stated that out of these 12 buyers only 5 buyers replied and confirmed the receipt of payment made by the Respondent.
6. Hearing in the matter was held on 07.06.2022. Same was attended by Shri Umesh Tiwari, Accounts Head for the Respondent. Applicant No. 1 did not appear for the hearing. During the personal hearing the Respondent was heard. The Respondent has re-iterated that they had produced their documents and records as and when required by the office of DGAP. The Respondent has accepted liability in respect of Block 'K' of "Celebrity Garden".
7. This Authority has carefully considered the Reports of the DGAP, submissions made by the Respondent and the case record. It is on record that Applicant No. 1 had filed a complaint alleging that the Respondent has not passed on the benefit of ITC to him by way of a commensurate reduction in the price of the flat purchased by him (Applicant No. 1) from the Respondent. We find that the DGAP, after investigation, has found that the Respondent has not passed on ITC benefit amounting to Rs.1,54,269/- (inclusive of GST) to his recipients/homebuyers as required under the provisions of Section 171 of the CGST Act, 2017. The details of the benefit required to be passed on to the eligible homebuyers have been detailed by the DGAP vide Annexure-11 of his Report dated 23.03.2020.

8. Section 171 of the CGST Act provides as under:-

"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."

It is clear from the plain reading of Section 171 (1) mentioned above 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 0.31%, whereas, during the post-GST period (July-2017 to September, 2019), it was 0.48%. This confirms that in the post-GST period, the Respondent has been benefited from additional ITC to the tune of 0.17% (0.48%-0.31%) 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.1,54,269/-. The DGAP has calculated the amount of ITC benefit to be passed on to all the eligible recipients as Rs.1,54,269/- on the basis of the information supplied by the Respondent. The Respondent has not disputed the methodology adopted by the DGAP or the amount of profiteering worked out by the DGAP. The Respondent vide E-mail dated 13.07.2020 has given a statement of anti-profiteering amount paid to customers and interest separately and enclosed the list of such recipient sent vide E-mail dated 29.05.2020. The details mentioned in the email are as under:-

Sr. no.	Customer Code	Name of customer	Profiteering including Tax
1	K704	Imran Khan	0
2	K003	Rajesh Kumar	850/-
3	K001	Garima Kanchan/Amit Srivastava	3,364/-
4	K503	Akanksha W/o Nirvikar Singh	6,283/-
5	K1001	Anoop Kumar	1,292/-
6	K1003	Malti Singh/Atul Pratap Singh	9,284/-
7	K1004	Vikash Rathi	4,742/-
8	K101	Kul Bhushan Dwivedi/Sapna Dwivedi	606/-
9	K102	K/01/02 Nagendra Dixit	12,737/-

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10	K103	Dr. Sangeeta Jaiswal/Dr. Ravi Jaiswal	5,823/-
11	K104	Nasreen Fatima	923/-
12	K1101	K/11/01 Himanshu Garg & Vandiny	1,700/-
13	K1103	Himanshu Tewari	9,362/-
14	K1203	Mohd. Hamid/Shabnam	8,748/-
15	K1204	Sri Narayan Singh	7,729/-
16	K201	Ram Niwas Sharma/Usha Sharma	3,104/-
17	K202	K202 Devanand Kushwaha	12,737/-
18	K203	Manju Pandey	503/-
19	K204	K204 Yogmaya Srivastava	7,508/-
20	K301	Dr. Sarita Singh	940/-
21	K302	Pushp Lata Sankhwar	1,204/-
22	K303	NEELESH KUMAR	1,185/-
23	K304	NITESH KUMAR	1,286/-
24	K401	Rina / Raj Kumar Maurya	2,105/-
25	K402	Tanima Sinha/ Neeraj Sinha	1,786/-
26	K403	Kavita Dwivedi	1,169/-
27	K404	Rajiv Jaitly	8,600/-
28	K501	Upendra Nath Pradhan	5,680/-
29	K502	Ankur Talwar	0
30	K504	Dilip Kumar Sarkar	29/-
31	K601	Jyoti Singh	1,530/-
32	K602	Priyanka Singh	3,400/-
33	K603	Mithilesh/Satya Swaroop	742/-
34	K604	Nirbhay Kumar Thakur	1,197/-
35	K701	Kanchan Jha	1,360/-
36	K703	Major Himanshu	1,573/-
37	K801	K801 Madhulika Singh	5,906/-
38	K802	K802 Madhulika Singh	765/-
39	K803	Pranshu B Pandey	1,041/-
40	K804	Himanshu Pandey	1,155/-
41	K901	Rajiv Kumar	0
42	K903	K/09/03 Tushar Srivastava	5,522/-
43	K904	Ashok Kumar Singh	8,799/-
		Total	1,54,269/-

9. In view of the above discussions, the Authority finds and determines that the Respondent has profiteered by an amount of Rs. 1,54,269/- for the project 'Celebrity Garden Block K' during the period of investigation i.e. 01.07.2017 to

30.09.2019. The above amount that has been profiteered by the Respondent from his Home buyers in the above mentioned project. The claim of their refund along with the interest @18% thereon, from the date when the above amount was profiteered by him till the date of such payment, in line with the provisions of Rule 133 (3) (b) of the GCST Rules 2017, need to be verified by the concerned CGST/SGST Commissionerate.

10. 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.
11. It is evident from the above narration of facts that Respondent has denied the benefit of Input Tax Credit (ITC) to the customers/Home buyers in contravention of the provisions of Section 171 (1) of the CGST Act, 2017 and he has thus committed an offence under Section 171 (3A) of the above Act and therefore, he is liable for imposition of penalty under the provisions of the above Section. However, since the provisions of Section 171 (3A) have come into force w.e.f. 01.01.2020 whereas the period during which violation has occurred is w.e.f. 01.07.2017 to 30.09.2019, hence the penalty prescribed under the above Section cannot be imposed on Respondent retrospectively.
12. Since there are other projects (Blocks) under the single GST Registration No. i.e. 09AABCL8340C1ZP, the Authority has reason to believe that the Respondent may have resorted to the profiteering in the said projects also and hence, directs the DGAP under Rule 133(5) to investigate all the others projects of the Respondent under the same GST registration which have not yet been investigated from the prospective of Section 171 of the CGST Act, 2017 and submit the complete investigation report for all the Projects under this single GST Registration. The Authority vide I.O 34/2020 dated 11.12.2020 has already directed DGAP to investigate other projects of the Respondent.
13. The concerned jurisdictional CGST/SGST Commissioner is directed to ensure compliance of this Order. It may be ensured that the benefit of ITC e.g profiteered amount is passed on by the Respondent to each recipient of supply as mention in paragraph 8 above along with interest @18% from the date that such amount was profiteered till the date of return of such profiteered amount as per the provisions of Rule 133 of the CGST Rules, 2017.
14. The concerned jurisdictional CGST/SGST Commissioner shall also submit a Report regarding compliance of this Order to this Authority and the DGAP within a period of 4 months from the date of receipt of this Order.
15. 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 limitation

prescribed under general law of limitation or any other special 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.

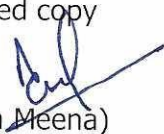
16. A copy of this order be sent, free of cost, to the Applicant, the DGAP, the Respondent, Commissioners CGST/SGST Lucknow, the Principal Secretary (Town and Country Planning), Government of Uttar Pradesh as well as UPRERA for necessary action.

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

F.No. 22011/NAA/149/Lifeways/2020

Dated: 24.06.2022

Copy To:

1. M/s Lifeways Infrastructure Pvt. Ltd. Raja Ram Kumar Plaza-75, Hazratganj, Lucknow-226001.
2. Shri Ashok Kumar Singh, 633/159, Gulzar Colony, Near Ayodhya Singh Inter College Chinhat Tiraha, Lucknow-227105
3. Pr. Chief Commissioner, GST Bhavan, Block E, 7-A, Ashok Marg, Hazratganj, Lucknow, Uttar Pradesh 226001
4. Office of the Commissioner, Commercial Tax U.P.. Commercial Tax Head Office Vibhuti Khand, Gomti Nagar Lucknow - 226010.

5. Chairman, UPRERA, Naveen Bhavan, Rajya Niyojan Sansthan, Kala Kankar House, Old Hyderabad, Lucknow – 226007
6. Principal Secretary, TCG / 1-A-V/5, Vibhuti Khand, Gomti Nagar, Lucknow, Uttar Pradesh-226010
7. Directorate General of Anti-Profiteering, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, New Delhi-110001.
8. Guard File