

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

Order No.	43/2022
Date of Institution	28.10.2020
Date of Order	26.07.2022

In the matter of:

1. **Sh. Arun Kumar Raina**, P-10, Parvana Vihar Apartment, Sector-9, Rohini, New Delhi-110085.
2. **Director General of Anti-Profiteering**, Central Board of Indirect Taxes & Customs, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.

Applicants

Versus

1. **M/s M3M India Pvt. Ltd.**, Unit No. SB/C/5L/Office/008, M3M Urbana, Sector-67, Gurugram, Manesar Urban Complex, Gurugram-122002.

Respondent

Quorum:-

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

Present :-

1. None for Applicants
2. None for the Respondent.



ORDER

1. The Present Report dated 27.10.2020 has been received from the Applicant No. 2, i.e. the Director General of Anti-Profiteering (hereinafter referred to as the 'DGAP') after detailed investigation under Rule 129 of the Central Goods & Services Tax (CGST) Rules, 2017. The brief facts of the case are that the Standing Committee on Anti-Profiteering, received an Application under Rule

128 of the CGST Rules, 2017 filed by Applicant No. 1, alleging profiteering in respect of construction service supplied by Respondent. The Applicant No. 1 alleged that the Respondent had not passed on the benefit of ITC to him by way of commensurate reduction in the price of the Unit No. ME TW-02/0501 purchased from the Respondent in the Respondent's project "M3M Escala", situated at Sector-70A, Gurugram, Haryana on introduction of GST w.e.f. 01.07.2017, in terms of Section 171 of the CGST Act, 2017.

2. The DGAP in his Investigation Report dated 27.10.2020, has inter-alia, submitted as under:-

2.1 The aforesaid application was examined by the Standing Committee on Anti-Profiteering, in its meeting held on 06.12.2019, the minutes of which were received by the DGAP on 20.12.2019, wherein, it was decided by the Standing Committee on Anti-Profiteering to forward the application to the DGAP to conduct a detailed investigation in the matter. Accordingly, the DGAP had initiated an investigation to collect necessary evidence to determine whether the benefit of ITC had been passed on by the Respondent to his customers in respect of construction service supplied by the Respondent. The period of investigation covered by the DGAP in the instant case is from 01.07.2017 to 30.11.2019.

2.2 After receiving the reference from the Standing Committee on Anti-Profiteering, a Notice was issued to the Respondent on 26.12.2019, under Rule 129 of the Rules, calling upon the Respondent to reply as to whether he admitted that the benefit of ITC had not been passed on to his customers by way of commensurate reduction in price and if so, to *suo moto* determine the quantum thereof and indicate the same in his reply to the Notice as well as furnish all supporting documents. Vide the said Notice, the Respondent was also given an opportunity to inspect the non-confidential evidences/information furnished by the Applicant No. 1 during the period 06.01.2020 to 07.01.2020. However, the Respondent did not avail of this opportunity.

2.3 The Applicant No. 1 vide his letter dated 10.02.2020 had submitted that the Respondent had deposited an amount of Rs. 72,858/- in his account by RTGS without taking consent from him in order to treat the complaint as closed.

2.4 The time limit to complete the investigation was 19.06.2020, however, vide Notification No.35/2020-Central Tax dated 03.04.2020 it was provided that

where, any time limit for completion/furnishing of any report, had been specified in, or prescribed or notified under the Central Goods and Service Act, 2017 which fell during the period from the 20th day of March, 2020 to the 29th day of June, 2020, and where completion or compliance of such action had not been made within such time, then, the time limit for completion or compliance of such action, shall be extended up to the 30.06.2020. Vide Notification No.55/2020-Central Tax dated 27.06.2020, the time limit was further extended as under:

- (i) *the words, figures and letters "29th day of June, 2020", the words, figures and letters "30th day of August, 2020" shall be substituted.*
- (ii) *the words, figures and letters "30th day of June, 2020", the words, figures and letters "31th day of August, 2020" shall be substituted.*

Further vide Notification No. 65/2020-Central Tax dated 01.09.2020, time limit was extended for further 3 months i.e. upto 30.11.2020. The Authority (hereinafter referred to as "the NAA") vide its order dated 13.07.2020 allowed further extension of 3 months Accordingly, time limit to complete the investigation stands extended upto 28.02.2021

2.5 In response to the Notice dated 26.12.2019, the Respondent submitted his reply vide letters and e-mails dated 10.01.2020, 23.01.2020, 05.03.2020, 13.03.2020, 23.07.2020, 04.08.2020 and 25.08.2020. The important submissions of the Respondent are re-iterated as under: -

- (a) With respect to the benefit of ITC available, the same was dependent upon various factors such as stage of construction, negotiation with vendors etc. The following three factors were comprehensive and must be considered for calculating the quantum of benefit: -

- ❖ Benefit of Transitional stock carried forward in Tran-1 Form.
- ❖ Saving of taxes on Goods/Services to be purchased in GST regime for completion of the project.
- ❖ Benefit on account of reduction in prices after negotiation with contractors.

- (b) He had estimated the additional benefit which shall accrue to him in "ESCALA" project based on the above factors. Accordingly, he had passed on the benefit on the basis of the area to the eligible customers of Project "Escala" by way of commensurate reduction in prices due to expected additional ITC accrued to the Respondent under the GST regime.

- (c) The below table summarises the saleable area and number of units in the project Escala undertaken by the Respondent.

Project Name	Launch Period	Saleable Area (in sq.ft.)	Number of Units
ESCALA	Pre-GST regime	2,89,390	152-Residential

- (d) The details of units booked under the project ESCALA in various periods were mentioned below:

ESCALA Project	
Number of Units booked as on 30.06.2017*	125
Number of Units booked as on 30.11.2019**	126

- (e) The table summarizes the details of turnover of the project undertaken by the Respondent: -

(In Rupees.)

Project	Pre-GST Regime (01.04.2016 to 30.06.2017)
	Total Turnover (including advances, adjustment and credit notes)
ESCALA	39,75,17,658
Other Projects	9,60,59,69,233
Total	10,00,34,86,891
As per ST-3	10,00,34,86,891

(In Rupees.)

Particulars	All projects		ESCALA	
	Gross Turnover	Taxable Turnover	Gross Turnover	Taxable Turnover
Construction @ 12%	6,95,80,13,984	4,63,86,75,989	51,68,27,530	34,42,51,078
Construction @ 5%	1,21,52,95,648	81,01,97,099	-	-
Construction- other @ 18%	61,41,17,862	61,41,17,862	7,46,79,104	7,46,79,104
Rent/Lease- 18%	20,39,56,830	20,39,56,830	38,43,597	38,43,597
Total	8,99,13,84,324	6,26,69,47,780	59,53,50,231	42,27,73,779

- (f) Supplies which were provided fully in GST regime were not covered into the Anti-Profiteering provisions directly. In this regard, reference could be

drawn to the Order of the Authority in the case of **M/s Hermeet Kaur Bakshi Vs. Conscient Infrastructure Pvt. Ltd** wherein it was held that in case there was no comparative pre-GST ITC that was accumulated or utilized by the Respondent the question of profiteering does not arise.

- (g) Comparison of ratio of ITC to turnover for pre-GST period and GST period was not the correct mechanism for calculation of Anti-Profiteering amount.
- (h) In absence of specified procedure and mechanism of calculation of profiteering, the proceedings were arbitrary and liable to be dropped.
- (i) Without prejudice to the above, the investigation cannot go beyond the application submitted by the Applicant No. 1 vide application dated 19.11.2019.
- (j) The present project "Escala" was not registered under RERA. The said project was launched in November, 2013.

2.6 Vide the aforementioned letters, the Respondent submitted the following documents/information:

- (a) Copies of GSTR-1 returns for the period July, 2017 to November, 2019.
- (b) Copies of GSTR-3B returns for the period July, 2017 to November, 2019.
- (c) Tran-1 and Tran-2 for the period July, 2017 to December, 2017.
- (d) Electronic Credit Ledger for the period July, 2017 to November, 2017.
- (e) Copies of VAT returns (including all annexures) & ST-3 returns for the period April, 2016 to June, 2017.
- (f) Copies of all demand letters issued and sale agreement made with the Applicant.
- (g) Details of VAT, Service Tax, ITC of VAT, CENVAT credit for the period April, 2016 to June, 2017 and output GST and ITC of GST for the period July, 2017 to November, 2019 for the project "ESCALA".
- (h) CENVAT/Input Tax Credit Register for the FY 2016-17, 2017-18, 2018-19 and for the period April, 2019 to November, 2019.
- (i) List of home buyers in the project "ESCALA" along-with details of benefit passed on.
- (j) Brief profile of the Respondent.
- (k) Sample copies of credit notes of benefit passed to 117 customers

2.7 Vide the Notice dated 26.12.2019, the Respondent was informed if any information/documents were provided on confidential basis, in terms of

Rule 130 of the Rules, a non-confidential summary of such information/documents was required to be furnished. However, the Respondent informed that all the data/information provided by the them, except for the Applicant Builder Buyer Agreement and Demand Note was confidential and was to be used only for the purpose of carrying out the investigation.

2.8 Vide e-mail dated 21.07.2020, the Applicant No. 1 was afforded an opportunity to inspect the non-confidential documents/reply furnished by the Respondent. The Applicant No. 1 availed of the opportunity on 04.08.2020 and after inspection of the documents submitted a letter dated 04.08.2020 and stated that he had checked the non-confidential papers submitted by the Respondent i.e. seller buyer agreement, the payment schedule and also the demand letter. The Applicant No. 1 also attached a letter dated 03.08.2020 wherein the following was informed:

- (i) M/s M3M delayed the transfer of ITC benefit to them
- (ii) The amount charged as taxes from the buyers and the amount paid to the Government was different and by making wrong transfer entries lesser amount was paid to the Government exchequer
- (iii) GST subsidy was paid unauthorized in his Savings account so that the proceedings of DGAP shall stop.

2.9 On the basis of the subject application, various replies of the Respondent/Applicant No. 1 and the documents/evidences on record had been carefully examined. The main issues for determination are: -

- (i) Whether there was benefit of reduction in rate of tax or ITC on the supply of construction service by the Respondent after implementation of GST w.e.f. 01.07.2017 and if so,
- (ii) Whether the Respondent passed on such benefit to the recipients by way of commensurate reduction in price, in terms of Section 171 of the CGST Act, 2017.

2.10 At the outset it was observed that the Applicant No. 1 in his letter dated 03.08.2020 had alleged about unauthorized payment of profiteered amount in his Bank account by the Respondent so that the proceedings of investigation of profiteering were dropped. It had further been alleged that the Respondent had taken higher amount of tax from him but lesser amount had been deposited to the government. In this context it was seen that

despite the payment made to the Account of the Applicant No. 1, the proceedings had not been dropped, hence, this issue needed no further deliberation. With respect to the second issue of collecting higher amount of tax and making lesser payment to the Government account, it is submitted that the issue related to lesser payment of tax was not going to affect the profiteering and the DGAP was not the proper Authority to look into this aspect.

2.11 The Respondent vide letter dated 05.03.2020 submitted copy of demand letters issued to the Applicant No. 1. The details of schedule of payment in installment plan was furnished in table-A below:-

Table A

Sr.No.	Linked Stages	Description
1.	10% of BSP less Booking Amount	10% of Basic
2.	Within 90 days of Booking	10% of Basic
3.	On Completion of Basement Roof Slab	10% of Basic
4.	On Completion of 4 th Floor Roof Slab	10% of Basic
5.	On Completion of Top Floor Roof Slab	20% of Basic
6.	On Completion of Internal Plaster	10% of Basic
7.	Upon Application for Occupation Certificate	10% of Basic
8.	Within 30 days of Notice for Possession	20% of Basic + 100% of Car Parking + 100% of IFMS + 100% Registration Charges +100% of Applicable Stamp Duty + 100% of Community Club Membership + 100% of DC + 100% of PLC



2.12 Another relevant point in this regard was 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) which 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 had 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 remain unsold at the time of issue of the completion certificate, in terms of Section 17(2) & Section 17(3) of the CGST Act, 2017, which read as under:

Section 17 (2) "Where the goods or services or both was used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as was attributable to the said taxable supplies including zero-rated supplies".

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

Therefore, the ITC pertaining to the unsold units might not fall within the ambit 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 benefit of additional ITC available to him post-GST.

2.13 Regarding the Respondent's concern w.r.t. the approach of comparison of ITC to turnover ratio of pre-GST and post-GST period, it was submitted that there was a direct relation of ITC availed with that of output tax to be paid, as the use of ITC was only towards making payment of his output liability and no refund of unutilized ITC shall be allowed under Section 54 (3) of the CGST Act, 2017. Further, in the case of Respondent, it was observed from the schedule of payment ("Table A") for a homebuyer that the payment to be made by him was directly linked with the construction of the project. The contention of the Respondent made in this para was incorrect as Section 171 was lucid that any additional benefit accrued to him on account of GST implementation was to be passed on to the eligible buyers as per his payment made. ITC benefit, if any, had to be passed on to each customer. Therefore, comparing ITC to Turnover ratio in pre-GST & post-GST period to arrive at a figure on

individual level which was proportionate to his payment made to the Respondent was correct in terms of Section 171. The costing of the project was also not seen as the issue pertains to extending the additional benefit on account of rate reduction or increase in Input Tax Credit.

2.14 The contention of the Respondent that absence of prescribed method/formula for calculation of profiteering and following a method on case-to-case was arbitrary and thus, the investigation was liable to be set aside was wrong. In this regard, it was submitted that the "Methodology and Procedure" had been notified by the Authority vide his Notification dated 28.03.2018 under Rule 126 of the CGST Rules, 2017. The main contours of the "Procedure and Methodology" for passing on the benefits of reduction in the rate of tax and the benefit of ITC were 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 ITC shall be passed on to the recipient by way of commensurate reduction in prices"*. It was clear from the perusal of the above provision that it mentions *"reduction in the rate of tax on any supply of good or services"* which does not mean that the reduction in the rate of tax was not required to be passed on to each recipient. Further, the above section mention *"any supply"* i.e. each taxable supply made to each recipient was entitled to receive the benefit of tax reduction on each invoice raised to him. The word *"commensurate"* mentioned in the above Section gives the extent of benefit to be passed on by way of reduction in the prices which had to be computed in respect of each supply based on the benefit of ITC as well as the existing base price (price without GST) of the supply. To give further clarifications and to elaborate upon the legislative intent behind the law, the Authority had been empowered to determine/expand the procedure and methodology in detail. However, one formula which fits all cannot be set while determining such a "Methodology and Procedure" as the facts of each case were different. 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 on inputs, rates of taxes, amount of ITC availed, total saleable area, area sold and the taxable turnover realized before and after the GST implementation would always be different than the other project and hence the amount of benefit of additional ITC to be passed on in respect of ne project would not be similar to another project. Issuance of Occupancy Certificate/Completion Certificate would also affect the amount of benefit of ITC as no such benefit would be available once the above certificates were issued. Therefore, no set parameters could be fixed for determining methodology to compute the benefit of additional ITC which would be required to be passed on to the buyers of such units.

Further, the facts of the cases relating to the Fast-Moving Consumer Goods (FMCGs), restaurants, construction and cinema houses was completely different and therefore, the mathematical methodology employed in the case of one sector cannot be applied in the other sector otherwise it would result in denial of the benefit to the eligible recipients. Further, applying the same mathematical methodology of FMCG Sector to a supplier of a cinema sector would in fact lead to erosion of justice in the name of uniformity.

- 2.15 The Respondent also contended that the investigation cannot go beyond the application submitted by the Applicant No. 1. In this regard, reference was made to 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 ITC shall be passed on to the recipient by way of commensurate reduction in prices*". Thus, the legal requirement was abundantly clear that in the event of a benefit of ITC or reduction in rate of tax, there must be a commensurate reduction in prices of any supply of goods or services.

Therefore, law prescribes that benefit of reduction in rate of tax or benefit of increase in ITC should result in commensurate reduction in prices of any Supply and accordingly, DGAP was justified in examining all the supply made by the Respondent beyond the application filed by the Applicant No. 1.

- 2.16 The Respondent, in his submission had given the reconciliation of CENVAT/ITC for the project 'Escala' and other projects of M3M. The Respondent had also submitted home buyer's details for the pre as well as post GST era and the same had been taken for the computation for profiteering.

- 2.17 As regards the allegation of profiteering, it was observed that prior to 01.07.2017, i.e., before the GST was introduced, the Respondent was eligible to avail credit of Service Tax paid on the input services (CENVAT credit of Central Excise Duty was not available) in respect of the flats for the project "ESCALA" sold by them. The Respondent was not eligible to avail ITC of VAT paid on the inputs, as he were working under composition scheme. Further, post-GST, the Respondent could avail ITC of GST paid on all the inputs and input services. From the data submitted by the Respondent covering the period April, 2016 to November, 2019, the details of the ITCs availed by them, his turnover from the project "ESCALA", the ratios of ITCs to turnovers, during the pre-GST (April, 2016 to June, 2017) and post-GST (July, 2017 to November, 2019) periods, were furnished in table-B below.

Table- 'B'

(Amount in Rs.)

Sr. No.	Particulars	Total (Pre-GST) April, 2016 to June, 2017	Taxable Turnover (June, 2017 to November, 2019)
1	CENVAT of Service Tax Paid on Input Services used for flats (A)	1,72,54,099	-
2	Input Tax Credit of VAT Paid on Purchase of Inputs (B)		-
3	Total CENVAT/Input Tax Credit Available (C)= (A+B)	1,72,54,099	-
4	Input Tax Credit of GST Availed (D)	-	3,58,45,059
5	Turnover for Flats as per Home Buyers List (E)	35,15,62,632	57,42,30,237
6	Total Saleable Area (in SQF) (F)	2,89,390	2,89,390
7	Total Sold Area (in SQF) relevant to turnover (G)	1,93,605*	2,05,927**
8	Relevant ITC [(H)= (B)*(G)/(F)]	1,15,43,176	2,55,06,982
Ratio of ITC Post-GST [(I)=(H)/(E)]		3.28%	4.44%

* The Area pertains to 108 live units against whom demand was raised by the Respondent during the period 01.04.2016 to 30.06.2017.

** The Area pertains to 114 live units against whom demand was raised by the Respondent during the period 01.07.2017 to 30.11.2019

2.18 From the above table-'B', 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 3.28 % and during the post-GST period (July, 2017 to November, 2019), it was 4.44% in Project "ESCALA". This clearly confirms that post-GST, the Respondent had benefited from additional ITC to the tune of 1.16% [4.44% (-) 3.28%] of the turnover.

2.19 The Central Government, on the recommendation of the GST Council, had levied 18% GST (effective rate was 12% in view of 1/3rd abatement for land value) on construction service, vide Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017. The effective GST rate was 12% for flats. Accordingly, on the basis of the figures contained in table- 'B' above, the comparative figures of the ratio of ITC availed/available to the turnover in the pre-GST and post-GST periods as well as the turnover, the recalibrated base price and the excess realization (profiteering) during the post-GST period, was tabulated in table-C below.

Table-C

Sr.No.	Particulars		
1	Period	A	July, 2017 to November, 2019
2	Output GST rate (%)	B	12
3	Ratio of CENVAT credit/ ITC to Total Turnover as per table - 'B' above (%)	C	4.44%/3.28%
4	Increase in ITC availed post-GST (%)	D= 4.44% less 3.28%	1.16%
5	<u>Analysis of Increase in Input Tax Credit:</u>		
6	Base Price raised during July, 2017 to September, 2019 (Rs.)	E	57,42,30,237
7	GST raised over Base Price (Rs.)	F= E*B	6,89,07,628
8	Total Demand raised	G=E+F	64,31,37,866
9	Recalibrated Base Price	H= E*(1-D) or 98.84% of E	56,75,69,166
10	GST @12%	I = H* B	6,81,08,300
11	Commensurate demand price	J = H+I	63,56,77,466
12	Excess Collection of Demand or Profiteering Amount	K= G-J	74,60,399

2.20 From table- 'C' above, it was clear that the additional ITC of 1.16% of the turnover should have resulted in the commensurate reduction in the base price as well as cum-tax price. Therefore, in terms of Section 171 of the CGST Act, 2017, the benefit of such additional ITC was required to be passed on to the recipients.

2.21 It was evident from the above calculation explained in Table-C on the basis of the aforesaid CENVAT/Input Tax Credit availability pre and post-GST and the details of the amount collected by the Respondent from the Applicant No. 1 in respect of the flats sold by the Respondent during the period 01.07.2017 to 30.11.2019, the benefit of ITC that needed to be passed on by the Respondent to the buyers of flats comes to Rs. **74,60,399/-** which included 12% GST on the base amount of Rs. 66,61,071/-.

2.22 As regards the verification on ITC benefit claimed to have been passed on to his homebuyers, by the Respondent, it was observed that the Respondent had provided the details of benefit of ITC passed on to individual homebuyers. This list was matched with the soft copies of tax invoice cum demand letter/credit note (issued to homebuyers) submitted by the Respondent. On verification of the copies of soft copies of tax invoice cum demand letter/credit note (issued

to homebuyers), it appears that the Respondent had passed on the ITC benefit of Rs. 87,75,787/- to 110 homebuyers. In order to cross check the claim of the Respondent, e-mails were sent to the 35 buyers. Out of these 16 buyers apart from the Applicant No. 1 had confirmed the receipt of payment made by the Respondent which was about 14% of the homebuyers list submitted by the Respondent. The details of confirmation of the receipt of payment received through e-mails were enclosed with the report. No buyers had responded in the negative. Further, it also appeared that in some cases, the Respondent had passed on the benefit of ITC more than the required commensurate benefit whereas in some cases, the benefit of ITC passed on was to be passed on and the ITC benefit claimed to had been passed on to the Applicant No. 1 and other home buyers, was furnished in table-'D' below:-

Table-'D'

(Amount in Rs.)

Sr. No.	Category of Customers	No. of Units	Area (in Sqf)	Amount Received Post GST	Profiteering Amt. as per Annex-19	Benefit passed on by the Respondent	Difference
A	B	C	D	E	F	G	H=F-G
1	Applicant	1	1638	57,50,705	74,713	72,858	1,855
2	Other Buyers	83	1,45,461	36,52,25,504	47,45,010	64,70,118	-17,25,108
3	Other Buyers	26	50,198	20,30,75,460	26,38,356	22,32,811	4,05,545
4	Other Buyers	4	8,630	1,78,568	2,320	0	2,320
Total		114	2,05,927	57,42,30,237	74,60,399	87,75,787	--

2.23 From the above table "D", it was observed that the benefit claimed to had been passed on by the Respondent was less than what should had been passed on to 31 flat owners and the Applicant No. 1 (Sr. 1, 3 & 4 of above table) by an amount of Rs. 4,09,720/-. The details of these amounts were given with the Report and the benefit claimed to had been passed on by the Respondent was slightly higher than the commensurate benefit, in respect of 83 Home buyers by an amount of Rs. 17,25,108/-. The details of this excess benefit claimed to had been passed on was given with the Report. However, this excess benefit claimed to had been passed on to some recipients, cannot be offset against the additional benefit required to be passed on to other home buyers who did not receive the commensurate benefit as each recipient/home buyers were entitled to commensurate benefit. The excess amount paid to any recipient could only be adjusted against any future benefit that might accrue to such recipient.

- 2.24 On the basis of the details of outward supplies of the construction service submitted by the Respondent, it was observed that the service had been supplied in the State of Haryana only.
- 2.25 From the above discussion, it appears that the benefit of additional ITC to the tune of 1.16% of the turnover, was accrued to the Respondent post-GST and the same was required to be passed on by the Respondent to his recipients. Section 171 of the CGST Act, 2017 appears to have been contravened by the Respondent, inasmuch as the additional benefit of ITC @1.16% of the base price received by the Respondent during the period 01.07.2017 to 30.11.2019, had not been passed on by the Respondent to the Applicant No. 1 and 113 other recipients. On this account, **it appears that the Respondent had realized an additional amount to the tune of Rs. 74,60,399/- (including GST)** which was inclusive of profiteered amount of Rs 74,713/- (including GST) in respect of the Applicant No. 1. **It also appears that the Respondent had passed on the ITC benefit of Rs. 87,75,787/-** to 110 homebuyers as mentioned in above Table-D. Further, from the above it was also observed that **the Respondent was yet to pass on an additional amount of Rs. 4,09,720/-** as mentioned at Sr.No.1, 3 & 4 of the Table-D which included both the profiteered amount @1.16% of the base price and GST on the said profiteered amount from the 30 other flat owners and the Applicant No. 1. The Applicant No. 1 and 113 other recipients are identifiable as per the documents provided by the Respondent, giving the names and addresses along with unit nos. allotted to such recipients. As observed earlier, the Respondent had supplied construction services in the State of Haryana only.
- 2.26 As aforementioned, the present investigation covers the period from 01.07.2017 to 30.11.2019, however, the Respondent received Occupation Certificate in the month of October, 2018 and therefore investigation with respect to unsold units would not form the part of profiteering.
3. The above Investigation Report was received by this Authority from the DGAP on 28.10.2020 and was considered in its sitting held on 03.11.2020 and Notice dated 05.11.2020 was issued to the Respondent and the Applicant No. 1 directing them to explain why the Report dated 27.10.2020 furnished by the DGAP should not be accepted and liability of the Respondent should not be fixed for violating the provisions of Section 171 of the CGST Act, 2017.
4. In response to the abovesaid Notice the Applicant No. 1 had filed his submissions dated 26.11.2020, and, inter-alia, stated as under:-

- 4.1 The Respondent, after receiving the Notice, had deposited the GST ITC to the tune of Rs. 72,858/- to his savings bank account on 04.02.2020 unauthorizedly and without his consent. He further prayed to the Authority for issuing directions to the Respondent to pay the interest, @18-24%, on the amount withheld by him since the date of payment, i.e. 03.09.2018 and impose a steep penalty on the Respondent. He has also filed a complaint in HRERA against the Respondent.

However, the above information was already on record as the same was mentioned by the DGAP in his Report dated 27.10.2020.

5. Further, the Respondent has filed his written submissions vide his Email dated 02.02.2021, which are summarized as follows:-

5.1 Comparison of ratio of Input Tax Credit to turnover for pre-GST period and GST period is not the correct mechanism for calculation of Anti-Profiteering amount

- 5.1.1 The ratio of Input Tax Credit to the turnover of Pre-GST and GST period for calculating the benefit of additional Input Tax Credit accrued to him shall never yield the correct quantum of Anti-Profiteering.

- 5.1.2 The comparison of above ratio is not appropriate for the reason that under the real estate sector there is no correlation of turnover with the cost of construction or development of a project. The turnover reflects the amount collected as per the payment or booking plans issued to the developer which is dependent upon marketing driven strategy. On the contrary, the Input Tax Credit is accrued to a developer on the basis of actual cost incurred by it while undertaking the development of a project. Thus, accrual of Input Tax Credit is not dependent on the amount collected from the buyers. Accordingly, calculating profiteering on the basis of turnover could not reflect the correct outcome for him.

- 5.1.3 To understand the above submission through an illustration, he assumed a case wherein the developer floats 25/75 scheme for one of its projects which was launched under the pre-GST regime. As per the scheme, the unit buyers/ applicants were required to pay 25 per cent of the apartment's cost at the time of booking and the rest after possession. The possession is supposed to be provided in the GST regime. In such a case, the quantum

of Input Tax Credit will be proportionately higher in the initial period as compared to the turnover. Accordingly, the ratio of Input Tax Credit to turnover will not reflect the correct position of benefit accrued to the developer.

5.1.4 The additional Input Tax Credit in the hands of the Respondent in terms of Section 171 of the CGST Act shall reflect such Input Tax Credit on goods or services which was not available earlier. However, the above approach for calculating the additional benefit accrued to him considered the change in rate of tax on input goods and services whose credit was available earlier also and has not considered the tax cost which was earlier blocked in the hands of the Respondent. Hence, the above approach of comparison of ITC to turnover ratio for pre GST and post GST period is not a correct approach.

5.2 The investigation cannot go beyond the application submitted by the Applicant no. 1

5.2.1 The investigation cannot go beyond the application submitted by the Applicant No. 1.

5.2.2 Chapter XV of the CGST Rules contains rules regarding Anti-Profiteering provisions. Rule 126 provides that Authority shall have the power to determine the methodology and procedure for determination whether the reduction in rate of tax or benefit of credit has been passed on to the recipient.

5.2.3 Rule 128 of the CGST Rules contains provisions regarding the examination of application by the Standing Committee and Screening Committee.

5.2.4 From Section 171 and Rule 126 and 128 of the CGST Rules, 2017, it can be concluded that an Anti-Profiteering investigation can be initiated only on receipt of written application from interested party, Commissioner or any other person. In the instant case, the proceedings were started with the application received from the Applicant No. 1. Hence, the investigation cannot go beyond the application and cover other customers also who have not questioned the benefit passed on to them.

5.2.5 Reliance is placed on the following orders of authority, wherein investigation, Report and final order of the Authority was restricted only on the product for which complaint was filed in the respective cases:

1. M/s U. P. Sales & Services vs. M/s Vrandavaneshwree Automotive Private Limited at 2018-VIL-01-NAA.

2. Shri Rishi Gupta vs. M/s Flipkart Internet Pvt Ltd. 2018 VIL 04-NAA.

5.2.6 The application in an Anti-Profiteering case acts as foundation and base of an investigation. In the present case, application was received from Sh. Arun Kumar Raina. Hence, the investigation cannot go beyond the application of Sh. Arun Kumar Raina and cover other customers also who have not questioned the benefit passed on to them.

5.2.7 The DG cannot suo-motu assume jurisdiction with regard to other recipients of the Respondent, on receipt of reference from the Standing Committee to conduct a detailed investigation in the matter of Applicant No. 1. It is submitted that the DG cannot exceed his jurisdiction by submitting his findings for other unit buyers and recipients who have not filed any application.

5.2.8 An application filed by a dissatisfied applicant may be compared to a show cause notice for a tax proceeding wherein the assessee is required to show as to why tax, interest, penalty, etc. should not be levied and collected from him. It is settled principle of law that an order adjudicating a show cause notice cannot travel beyond the scope of a show cause notice. In this regard reliance is placed on the case of Toyo Engineering India Limited vs. Commissioner of Customs, Mumbai reported at 2006 (201) E.L.T. 513 (S.C.) wherein the Hon'ble Supreme Court held that the department cannot travel beyond the show cause notice. The extract of the relevant portion of the judgment is provided below for quick reference:

16. Learned counsel for the Revenue tried to raise some of the submissions which were not allowed to be raised by the Tribunal before us, as well. We agree with the Tribunal that the revenue could not be allowed to raise these submissions for the first time in the second appeal before the Tribunal. Neither adjudicating authority nor the appellant authority had denied the facility of the project import to the respondent on any of these grounds. These grounds did not find mention in the show cause notice as well. The Department cannot be travel beyond the

show cause notice. Even in the grounds of appeals these points have not been taken."

(Emphasis Supplied)

5.2.9 Similarly, In the case of Reckitt & Colman of India Ltd. vs. Collector of Central Excise, reported at 1996 (88) E.L.T. 641 (S.C.) it was held by the Hon'ble Supreme Court that the Revenue authorities cannot make an order against an assessee that is based on allegations and grounds that were not raised in the notice of show-cause. The relevant paragraph has been extracted for reference:

3. It will be remembered that the case of the Revenue, which the appellant had been required to meet at every stage from the show cause notice onwards, was that the said product was a preparation based on starch. Having come to the conclusion that the said product was not a preparation based on starch, the Tribunal should have allowed the appeal. It was beyond the competence of the Tribunal to make out in favour of the Revenue a case which the Revenue had never canvassed and which the appellants had never been required to meet. It is upon this ground alone that the appeal must succeed."

(Emphasis Supplied)

5.2.10 On the basis of the aforementioned discussion, the Respondent has submitted that like an order cannot travel beyond a show cause notice, the investigation and report of the DGAP, cannot go beyond the application which acts as a basis of the investigation.

5.2.11 In this regard, reliance is placed on the case of Fx Enterprise Solutions India Pvt. Ltd. and Ors. vs. Hyundai Motor India Limited, 2017 CompLR 586 (CCI), wherein the Commission had asked the officer to conduct Investigation regarding the contravention of Section 3(4) read with Section 3(1) of the Competition Act. However, the officer also investigated whether the party has abused its dominant position in contravention of Section 4 of the Act. In this case Commission held that the officer's investigation of contravention of Section 4 of the Act by the part was decors the directions given and was ultra vires the scope of investigation. The extract of the relevant portion of the judgement is as follows:

..44...Thus, it is observed that the Commission had not directed the DG to investigate whether the OP has abused its dominant position in contravention of Section 4 of the Act. Further, both Information-1 and Information-2 filed by the Informants, only allege contravention of Section 3(4) read with Section 3(1) of the Act. No allegations of abuse of dominance have been put forth by the Informants.

..45.. Accordingly, the Commission is of the view that the DG's investigation of contravention of Section 4 of the Act by the OP, being dehors the directions given to the DG, is ultra vires the scope of investigation deserves to be disregarded.

5.2.12 Accordingly, in the light of the aforementioned discussion, it was contended that the Report should be restricted to the Applicant No. 1 who has filed the application to concerned committee.

6. The Respondent's above submissions were forwarded to the DGAP to file his clarifications under Rule 133(2A) of the CGST Rules, 2017. The DGAP furnished his clarifications dated 15.02.2021, which are summarised as follow:-

6.1 Comparison of ratio of Input Tax Credit to turnover for pre-GST period and GST period is not the correct mechanism for calculation of Anti-Profitteering amount

6.1.1 Section 171 refers to Input Tax Credit, whereas prior to introduction of GST the credit taken against inputs or services was called CENVAT or VAT. Goods & Service tax subsumed all indirect taxes and accordingly the nomenclature of different types of credits was changed to Input Tax Credit. However, the nature and functionality of credit taken on inputs/services continues to remain the same. Although Section 121 refers to benefit of Input Tax Credit, to arrive at the benefit which accrued to the Respondent in terms of credit taken on inputs, a reference point is necessary. To compare the benefit of Input Tax Credit, it is necessary to determine the prevailing ITC available to the Respondent as well as credit on inputs available to the Respondent in the pre-GST regime. Thus, the contention of the Respondent that "Input Tax Credit" appearing in Section 171 must necessarily mean Input Tax Credit in the GST regime only is a product of unreasonable stretch of imagination, being illogical and erroneous.

6.1.2 In the Real Estate sector, profiteering is worked out by computing the additional benefit of ITC that accrued to the service provider. Ratio of additional ITC is worked out by comparing pre-GST credit and post-GST credit ratio in relation to turnover. As the commensurate benefit of ITC has to be given to each recipient, the mover i.e. payment made by each recipient is the integral part of methodology of calculation. This component decides the benefit to be passed on to each of the recipient. Further, the ratio of additional benefit of ITC is calculated by taking into consideration turnover and area sold, as area sold has direct relation with turnover. This

is also pertinent to mention that in the case of unsold flats there is no turnover and therefore no profiteering can be attributed in these cases and the entire ITC is required to be reversed. This methodology has already been accepted by the Authority.

The Respondent's contention is incorrect as Section 171 mandates that any additional benefit accrued to him on account of GST implementation is to be passed on to the eligible buyers as per their payment made. ITC benefit, if any, has to be passed on to each customer. Therefore, comparing ITC to Turnover ratio in pre-GST & post-GST period to arrive at a figure on individual level which is proportionate to their payment made to the Respondent is correct in terms of Section 171. The costing of the project is also not seen as the issue pertains to extending the additional benefit on account of rate reduction or increase in Input Tax Credit.

6.2 The investigation cannot go beyond the application submitted by the Applicant

- 6.2.1 The contention of the Respondent made in this para is not correct. Section 171 (2) of the CGST Act, 2017 states that "The Central Government may, on recommendations of the Council, by notification, constitute an Authority, or empower an existing Authority constituted under any law for the time being in force, to examine whether Input Tax Credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him." Therefore, the above Section has already given powers to the Authority to expand the scope of the investigation to all the supplies made by a registered person. This Section empowers the Authority to examine if the benefit of the Input Tax Credits and reduced tax rates have been passed by him or not. Since, the Section doesn't mention about any particular recipient it implies that all the supplies made by a registered person to all his recipients need to be examined from the perspective of passing on the benefits to each buyer. Therefore, all the supplies are required to be investigated because there is a single GST return for all the supplies made by a particular registered person, and there is also a single credit entry in the ITC ledger of the registered person. It is not possible to earmark a portion of the total ITC to a particular product/SKU being supplied by a registered person, which can be done only after all the supplies are investigated.

6.2.2 The Respondent has also contended that there is no provision under the Central Goods and Services Tax Act, 2017 and the Rules made thereunder, that enables the DGAP to suo-moto assume jurisdiction. In this regard, the DGAP has submitted that in the present case, the Authority is a creation of the Statute, namely the CGST Act, 2017. The powers, functions and duties of any Authority are supposed to flow from the parent statute itself. The parent Section 171 of the Act, which governs the Authority, nowhere says that the cause of action before the Authority lies only in case of a written complaint. The Authority has been given ample powers under subsection 2 of section 171 to independently examine whether the benefits have been passed on by the supplier or not. The word "complaint" is not even mentioned in this subsection. This power of Authority has been further clarified by Section 171 (3) read with Rule 126 of the CGST Rules, 2017 and para 9 of the Procedure and Methodology determined by Authority. By giving more credence to the Rule 126(1) than the parent statute Section 171(2), and reading it in a particular way the Respondent is trying to circumvent the statutory powers of Authority as well as the legislative intent of the legislature. The DGAP, the investigation arm of the Authority, has exercised this statutory power under Authority, given under Section 171(2) of the Act and has examined whether there is any violation of Section 171(1) of the Act. Thus, the Authority is competent to suo-moto order investigation against the Respondent once information of profiteering has been received by it.

It is also submitted that cases of Gujarat Urja Vikas Nigam limited vs. Solar Semi-conductor Power Company (India) Private Limited and Ors. (2017) and Rajeev Hitendra Pathak and Ors. v. Achyut Kashinath Karelkar and Anr. 2011 (9) SCALE 287 are not relevant in this case as facts of the present case are different from them and consumer welfare is at the centre of Section 171.


6.2.3 The citation of case law by the Respondent i.e. **Toyo Engineering India Limited vs. CC, Mumbai, 2006 (201) E.L.T. 513 (S.C.)**, **Reckitt & Colman of India Ltd. vs CCE, 1996 (88) E.L.T. 641 (S.C.)** and **Fx Enterprises Solutions India Pvt. Ltd. and Ors vs. Hyundai Motors India Limited 2017 CompLR 586 (CCI)** is not relevant and applicable in this matter as reasons cited in above paras.

7. Since, the quorum of the Authority of minimum three Members, as provided under Rule 134 was not available till 23.02.2022, the matter was not decided.

With the joining of two new Technical Members in February 2022, the quorum of the Authority was restored from 23.2.2022, and a copy of the above clarifications dated 04.03.2021 was supplied to the Respondent to file his rejoinder, if any, and personal hearing was scheduled to be held on 23.03.2022. However, the Respondent, vide his email dated 23.03.2022, had requested for adjournment of his personal hearing due to some medical issues. Hence, personal hearing was rescheduled to be held on 29.04.2022 by the Authority. However, vide Email dated 29.04.2022, the Respondent had filed his written submissions dated 06.04.2022 and further stated that he did not want any personal hearing in the matter. The Applicant No. 1, vide his Email dated 28.04.2022, also submitted that he had nothing more to add to his submissions made earlier. However, the Applicant No. 1 had requested for the submissions made by the Respondent vide his Email dated 29.04.2022. Consequently, this Authority, vide Order dated 05.05.2022, had closed the hearing and supplied a copy of the Respondent's submissions dated 06.04.2022, filed vide his Email dated 29.04.2022, to the Applicant No. 1.

8. We have carefully considered the Report furnished by the DGAP, the clarifications filed by him and the records of the case. Section 171 of the CGST Act, 2017 provides that any reduction in the rate of tax on any supply of goods or services or benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices. In the instant case, there is no reduction of rate of tax during the relevant period and the only issue which is required to be decided by the Authority is as to whether Respondent is required to pass on the benefit of input tax credit. As mentioned in earlier paragraphs, DGAP has carried out investigation in the subject matter and collected relevant information/evidences from the Respondent and after the analysis of the same the DGAP has come to a conclusion that the Respondent has gained benefit of ITC on the supply of Construction services after the implementation of GST w.e.f. 01.07.2017 and the Respondent was required to pass on such benefit to the homebuyers by way of commensurate reduction in prices in terms of Section 171 of the CGST Act, 2017 during the period 01.07.2017 to 31.06.2019. The DGAP has calculated that an amount of benefit of ITC not passed on to the recipients or in other words, the profiteered amount comes to Rs. 74,60,399/- which includes 12% GST on the base profiteered amount of Rs. 66,61,071/-. Further, it is submitted by the DGAP that the Respondent had already passed on substantial amount of GST ITC to the homebuyers in accordance with the requirements of Section 171 of the CGST Act, 2017 at the time of offer of possession to the homebuyers and the Respondent had submitted the Tax Invoices cum Demand letters/ Credit Notes issued to the

homebuyers and Acknowledgment letters (on sample basis) from the Homebuyers as supporting documents against his claim. Further the DGAP has submitted that to cross check the claim of the Respondent, e-mails were sent to 35 homebuyers, out of which, 16 buyers apart from the Applicant No. 1 confirmed the receipt of the payment made by the Respondent. The Applicant No. 1 has also confirmed receiving an amount of Rs. 72,858/- from the Respondent. The Respondent had submitted that he had passed on the benefit of Rs. 87,75,787/- to 110 homebuyers who had already booked their flats up to 30.11.2019. The period of investigation covers the period from 01.07.2017 to 30.11.2019, however, the Respondent had received Occupancy Certificate (OC) in October, 2018, and therefore, investigation with respect to unsold units did not form the part of profiteering as calculated by the DGAP.

9. In view of the above facts, the Authority finds that the benefit of additional Input Tax Credit of 1.16% of the turnover has accrued to the Respondent for the project "M3M Escala". This benefit was required to be passed on to the recipients. Thus, Section 171 of the CGST, 2017 has been contravened by the Respondent, inasmuch as the additional benefit of ITC @1.16% of the base price received by the Respondent during the period 01.07.2017 to 30.11.2019, was required to be passed on by the Respondent to 114 recipients including the Applicant no. 1. These recipients are identifiable as per the documents provided by the Respondent, giving the names and addresses along with Unit no. allotted to such recipients.
10. The Applicant No. 1 vide his letter dated 26.11.2020, has claimed that the Respondent had unauthorisedly deposited an amount of Rs. 72,858/- to his account. Further, he had requested the Authority not to drop the proceedings on this basis. In this matter, the proceedings have not been dropped; hence, this issue had already been addressed and needs no further deliberation. 
11. Further, the Authority finds that the Respondent vide his submissions dated 02.02.2021 had raised several contentions to the DGAP's Report dated 27.10.2020.
 - 11.1 The Respondent has contended that comparison of ITC to Turnover for pre-GST and post-GST period is not the correct mechanism for calculation of profiteering amount as this formula for calculating the benefit of additional ITC would never yield the correct quantum of profiteering. It was further claimed that there was no correlation between turnover and the cost of construction or development of a project. In relation to the above

submission of the Respondent, the Authority finds that there is correlation between the Turnover and the cost of construction as the Respondent is raising demands on the basis of the completion of each stage of the development of the project. The raising of demand has no correlation with the market driven strategies of the Respondent as is evident from his payment plan which he is offering to his buyers. Accordingly, the Respondent is earning ITC on the basis of the material purchased by him for each stage. Even if he has received advances from the buyers, he is applying the same to purchase material as per the development plan circulated by him to the buyers. The Respondent is also liable to pass on the benefit of ITC in case he sells the flats before receiving the Completion Certificate. Therefore, the Authority finds that the above contention is wrong and accordingly, the comparison of the ratios for passing on the benefit of ITC is correct as per the provisions of Section 171 of the CGST Act, 2017.

- 11.2 With regard to the contentions of the Respondent that investigation cannot go beyond applications submitted by the applicant, the Authority finds that the Section 171(2) of the CGST Act, 2017 provides that the benefits of tax reduction and ITC are to be passed on by each registered person by commensurate reduction in prices on each supply to every recipient and this Authority is empowered to examine whether these benefits have been passed on or not. To assist this Authority while making such examination, an investigating agency designated as the DGAP has been created under Rule 129 of the CGST Rules, 2017 to conduct detailed investigation and submit Report to this Authority under Rule 129 (6) to determine whether the above benefits have been passed or not in terms of Section 171 (1) and Rule 133 (1) of the above Rules. Under Rule 129 (2) the DGAP has mandate to conduct investigation and collect necessary evidence to determine whether these benefits have been passed on. Further, the Government of India, Ministry of Finance, Department of Revenue, Central Board of Indirect Taxes and Customs vide its Office Order No. 05/Ad.IV/2018 dated 12.06.2018 in pursuance of the Government of India (Allocation of Business) 34th Amendment Rules, 2018 has assigned the following duties to the DGAP:-

- a. "Conduct of investigation to collect evidence necessary to determine whether the benefit of reduction in the rate of tax on any supply of goods or services or the benefit of input tax credit has been passed on to the recipient by way of commensurate reduction in prices, in

terms of Section 171 of the Central Goods and Services Tax Act, 2017 and the rules made thereunder.

- a. Responsibility for coordinating anti-profiteering work with the National Anti-profiteering Authority, the Standing Committee and the State level Screening Committees."

Therefore, the Authority finds from the above provisions that the Office of the DGAP has been charged with the responsibility of conducting detailed investigation to collect evidence necessary to determine whether both the above benefits have been passed on or not in terms of the provisions of Section 171 of the CGST Act, 2017 and the Rule 129. The above Rule has been framed by the Central Government under Section 164 of the CGST Act, 2017 read with Section 171(3) which has approval of the Parliament and all the State Legislatures and of the GST Council which is a Constitutional body established under 101st Amendment of the Constitution and also has approval of the Central Government and the State Governments. There is no provision in the above Act or the Rules which provides that the investigation shall be limited to the projects against which complaint has been received. Moreover Section 171 (2) of the above Act empowers this Authority to examine all such cases in which the benefit of tax and ITC is required to be passed on. Since the Respondent is executing all his projects under single registration and availing ITC on all the projects executed under a common pool, the project being executed by the Respondent are required to be investigated to determine whether the benefit of additional ITC has been passed on each product to each buyer or not. The Respondent has referred to several case laws contending that investigation cannot go beyond Show Cause Notice. In this regard, the Authority finds that the Respondent has been given notice by the Authority informing him of findings of DGAP in the investigation and the present order is outcome of the allegation/findings of the DGAP. Therefore, the Authority finds that the contention of the Respondent is not correct and cannot be accepted and the case laws referred by him are not relevant to the present case.

- 11.3 Rule 133 (5) of the CGST Rules, 2017, further clarifies the scope of expanded investigation in order to remove any doubt. The above Rule is just a re-iteration of the provisions of Section 171(2) which was in the statute since the inception of the CGST Act, 2017.

- 11.4 The cases of M/s U. P. Sales & Services vs. M/s Vrandvaneshwaree Automotive Pvt. Ltd. and Shri Rishi Gupta vs M/s Flipkart Internet Pvt. Ltd. are not relevant to the present case, as the facts of each case are different and consumer welfare is the center of Section 171. Further, the above relied upon case was a case of Nil profiteering, so the Authority did not find merit to extend the scope of investigation beyond one product. The objective of Section 171 of the CGST Act, 2017 is to ensure that the benefit of ITC and rate reduction is passed on to each beneficiary. In the present case, it is found that the Respondent has not passed on the benefit of ITC to the all the flatbuyers in his project namely 'M3M Escala'. Therefore, profiteering cannot be limited to the Applicant No. 1 only.
- 11.5 The Respondent has also contended that there is no provision under the Central Goods and Services Tax Act, 2017 and the Rules made thereunder, that enables the DGAP to *suo-moto* assume jurisdiction. The Authority finds that it is a creation of the Statute, namely the CGST Act, 2017. The powers, functions and duties of the Authority flow from the parent statute itself. The parent Section 171 of the Act, which governs the Authority, nowhere says that the cause of action before the Authority lies only in case of a written complaint. The Authority has been given ample powers under subsection 2 of section 171 to independently examine the benefits have been passed on by the supplier or not. The word "complaint" is not even mentioned in this subsection. This power of Authority has been further clarified by Section 171(3) read with Rule 126 of the CGST Rules, 2017 and the para 9 of the Procedure and Methodology determined by Authority. By giving more credence to the Rule 128(1) than the parent statute Section 171(2), and reading it in a particular way the Respondent is trying to circumvent the statutory powers of the Authority as well as the legislative intent of the legislature. The Authority exercises this statutory power, given under Section 171(2) of the Act and examines whether there is any violation of Section 171(1) of the Act. Further, DGAP is the investigating arm of the Authority to carry out investigation relating to profiteering matter. Thus, the Authority is competent to *suo-moto* order investigation against the Respondent once information of profiteering has been received by it. The DGAP is also legally bound to bring all such case of profiteering where provisions of Section 171 have been violated so that this Authority can examine the same in consequence of its power given to it under Section 171 (2). In view of the above said, the contention of the Respondent is untenable and is rejected.

12. In view of the above facts, the Authority finds that the Respondent has gained the benefit of ITC on the supply of Construction Services after the implementation of GST w.e.f. 01.07.2017 and the Respondent was required to pass on such benefit of ITC to the homebuyers/customers by way of commensurate reduction in prices in terms of Section 171 of the CGST Act, 2017. However, it is observed that the benefit was not commensurately passed on by the Respondent to his recipients, taking into account the aforesaid Input Tax Credit availability post GST and the details of the amount collected from the home buyers during the period 01.07.2017 to 30.11.2019, the amount of benefit of ITC not passed on to the recipients or in other words, the profiteered amount comes to Rs. 74,60,399/- which includes GST (including Rs. 74,713/- of the Applicant No. 1). The Respondent has claimed that he had already passed on a substantial amount of GST ITC per the requirements of Section 171 of the CGST Act, 2017 to the homebuyers. The Respondent had submitted that he had passed on the benefit of Rs. 87,75,787/- to 114 homebuyers/customers. The Respondent has also claimed that he has passed on excess ITC benefit of Rs. 17,25,108/- to 83 buyers/customers. The DGAP has responded to such claims as tabulated at Table D above and found that Respondent has not passed commensurate benefit to all homebuyers/customers. The provision of law mentioned herein above provide that benefit of the ITC needs to be provided to each and every supply in the commensurate manner. As such, the excess of the ITC benefit provided to some of the homebuyers/customers cannot be offset against others to whom less ITC benefit has been provided or no benefit have been provided at all. The details of all eligible homebuyers/customers and the amount of the benefit to be passed on to each of them is enclosed as the **Annexure-A** to this Order.
13. From the above discussions, the Authority determines that the Respondent has profiteered an amount of Rs. 74,60,399/-. Therefore, given the above facts, the Authority under Rule 133(3)(a) of the CGST Rules orders that the Respondent shall reduce the prices to be realized from the buyers of the flats/customers commensurate with the benefit of ITC received by him. The details of the recipients and benefit which is required to be passed on to each recipient/homebuyer (including Applicant No. 1) along with the details of the unit are contained in the Annexure 'A' to this order. The Authority directs that the profiteered amount as determined shall be passed on/returned by the Respondent to the recipients of supply along with interest @18%, as prescribed under Rule 133(3)(b) of the CGST Rules, 2017, from the date such amount was profiteered by the Respondent up till the date such amount is passed on/returned to the respective recipient of supply (if not already passed on) within a period of three months from the date of this order.

14. For the reasons mentioned hereinabove and in the given facts and circumstances and also stated position of law we find that the Respondent has denied the benefit of ITC to the buyers of his flats in contravention of the provisions of Section 171 (1) of the CGST Act, 2017. The Authority hold that the Respondent has committed an offence by violating the provisions of Section 171 (1) during the period from 01.07.2017 to 30.11.2019, and therefore, he is liable for imposition of penalty under the provisions of Section 171 (3A) of the above Act. However, perusal of the provisions of the said Section 171 (3A) shows that it has been inserted in the CGST Act, 2017 w.e.f. 01.01.2020 vide Section 112 of the Finance Act, 2019 and it was not in operation during the period from 01.07.2017 to 30.11.2019 when the Respondent had committed the above violation. Hence, the said penalty under Section 171 (3A) cannot be imposed on the Respondent retrospectively.
15. The concerned jurisdictional CGST/SGST Commissioner is also directed to ensure compliance of this Order. It may be ensured that the benefit of ITC as determined by the Authority as per the Annexure 'A' of this Order be passed on along with interest @18% to each homebuyer/customer, if not already passed on. In this regard an advertisement may also be published in a minimum of two local Newspapers/vernacular press in Hindi/English/local language with the details i.e. Name of the builder (Respondent) – M/s M3M India Pvt Ltd., Project- "M3M Escala", Location- Gurugram, Haryana and amount of profiteering Rs. 74,60,399/- so that the Applicant No. 1 along with Non-Applicant homebuyers/customers can claim the benefit of ITC which has not been passed on to them. Homebuyers/customers may also be informed that the detailed NAA Order is available on Authority's website www.naa.gov.in. Contact details of concerned Jurisdictional Commissioner CGST/SGST for compliance of this Authority's order may also be advertised through the said advertisement.
16. Further, this Authority as per Rule 136 of the CGST Rules 2017 directs the concerned jurisdictional CGST/SGST Commissioner shall also submit a Report regarding the compliance of this order to the Authority and the DGAP within a period of 4 months from the date of this order.
17. Further, the Hon'ble Supreme Court, vide its Order dated 23.03.2020 in Suo Moto Writ Petition (C) No. 03/2020 while taking suo-moto cognizance of the situation arising on account of the Covid-19 pandemic, has extended the period of limitation prescribed under the 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 or special laws in respect of all judicial or quasi-judicial proceedings."

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

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

Encls: Annexure A List of buyers with details of determined profiteered amount (2 pages)

Sd/-
(Amand Shah)
Technical Member &
Chairman

Sd/-
(Pramod Kumar Singh)
Technical Member



Sd/-
(Hitesh Shah)
Technical Member

Certified Copy


(Dinesh Meena)
Secretary, NAA

F. No. 22011/NAA/216/M3M/2020

4719 — 4725

Date: 26.07.2022

Copy To:-

1. M/s M3M India Pvt Ltd. Unit No.SB/C/5L/Office/008, M3M Urbana, Sector-67, Gurugram Manesar Urban Complex, Gurugram-122002.
2. Sh. Arun Kumar Raina, P-10, Parvana Vihar Apartment, Sector-9 Rohini, New Delhi-110085.
3. Chairman, Haryana Real Estate Regulatory Authority, New PWD Rest House, Civil Lines, Gurugram, Haryana.
4. Principal Commissioner of CGST, GST BHAVAN, Plot No. 36-37, Sector - 32, Gurugram, Haryana - 122001.
5. Commissioner Commercial Taxes, Haryana, Vanijya Bhawan, Plot No. I-3, Sector - 5, Panchkula - 134151.
6. Directorate General of Anti-Profitteering, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, New Delhi-110001.
7. Guard File.



Profiteering details of the Home Buyers			
Name of Project - M3M ESCALA			
Sr.No.	Name of Customer	Unit no.	Final Profiteering
1	Ms. SONAL SAWHNEY	ME TW-02/1603	104,336
2	Mr. SATISH KUMAR GUPTA	ME TW-02/1703	130,188
3	Ms. VIBHA RAI	ME TW-01/0502	99,393
4	Mr. NIVESH CHAUDHARY	ME TW-01/1502	88,317
5	Ms. SHUBEENA KAUSHIK	ME TW-01/1701	75,010
6	Mr. ABHISHAKE KUNDU	ME TW-01/1703	64,548
7	Ms. KIRAN ZAVERI	ME TW-01/2003	65,751
8	Mr. ROHANJEET SINGH BHOGAL	ME TW-02/0102	107,242
9	Mr. CHANMOHAN SINGH GUJRAL	ME TW-02/0504	98,480
10	Mr. SAURABH JAIN	ME TW-02/0602	31,772
11	Ms. RABIA SAREEN	ME TW-02/0803	151,937
12	Ms. RANJIT KAUR	ME TW-02/0804	110,585
13	Mr. MANMOHAN TIWARI	ME TW-02/0802	54,958
14	Mr. ARVIND SURI	ME TW-02/1101	33,327
15	Mr. CHANDRA BHAN SHARMA	ME TW-02/1201	34,071
16	Ms. VAGDA KANWAR TRIVEDI	ME TW-02/1504	30,719
17	Mr. ABHISHEK BANSAL	ME TW-02/1502	48,869
18	Mr. KAILASH KUMAR JAIN	ME TW-02/1602	57,982
19	Mr. RETESH KUMAR BHUMBAK	ME TW-02/1704	86,201
20	Mr. GAURAV JUNEJA	ME TW-02/1804	41,226
21	Dr. MEENAKSHI TYAGI	ME TW-01/0702	87,109
22	Mrs. MAMTA SHARMA	ME TW-01/0703	30,221
23	Mrs. RITU JAIN	ME TW-01/0701	43,686
24	Ms. SHVETA VOHRA	ME TW-01/0903	61,454
25	Mr. KULDEEP	ME TW-01/0904	33,884
26	Mr. ASHEESH GOYAL	ME TW-01/0901	42,455
27	Mr. MAYANK SALWAN	ME TW-01/1903	61,258
28	Ms. DIVYA SANSI	ME TW-02/0704	108,094
29	Ms. NIVEDITA SINHA	ME TW-02/1004	88,772
30	Mr. GIAN CHAND GOYAL	ME TW-02/1503	166,028
31	Mr. SHANTANU DEY	ME TW-02/1701	73,585
32	Mr. ATIN KAPUR	ME TW-01/1704	68,018
33	Mr. BIJAN KUMAR CHOUDHURY	ME TW-02/0301	74,582
34	Mr. MADHUR DHAWAN	ME TW-02/0401	74,068
35	Mr. ASHISH GUPTA	ME TW-02/1103	41,693
36	Mr. NITIN VERMA	ME TW-02/1204	88,457
37	Ms. BOBBY SINHA	ME TW-02/1902	61,035
38	Mr. VISHAL MAKANI	ME TW-01/0104	78,617
39	Mr. RAJESH SHARMA	ME TW-01/0503	30,826
40	Dr. MANJIT SINGH KANWAR	ME TW-01/0604	70,574
41	Lt.Col. SUMANT GOVIND KHARE	ME TW-01/0802	84,627
42	Mr. MUKESH LAKHANI	ME TW-01/0803	30,422
43	Ms. SEEMA JAIN	ME TW-01/1002	93,286
44	Mr. KAMAL KISHORE PANDEY	ME TW-01/1103	30,366
45	Mr. DINESH GUPTA	ME TW-01/1101	42,988
46	Mr. BHARAT MITTAL	ME TW-01/1504	68,152
47	Mr. ARUN KOHLI	ME TW-01/1904	73,370
48	Mr. KAPIL SINGHAL	ME TW-02/0304	107,640
49	Mr. RAM LAL SACHDEVA	ME TW-02/0503	98,481
50	Mr. JAIDEEP GURWARA	ME TW-02/0701	33,401
51	Ms. SHUBHI SARAN	ME TW-02/0801	74,199

52	Mr. RAJESH GUPTA	ME TW-02/0902	
53	Ms. MONICA	ME TW-02/1803	57,982
54	Mr. GAURAV JUNEJA	ME TW-02/1801	86,201
55	Mr. K ABHIJIT ASWATH	ME TW-02/1802	32,348
56	Mr. ANURAG JUNEJA	ME TW-02/1901	60,490
57	Mr. ANURAG JUNEJA	ME TW-02/1904	32,348
58	Ms. AMBIKA JOSHI	ME TW-01/0203	41,226
59	Mr. SAMEER NANDA	ME TW-01/0403	60,621
60	Ms. ADITI SUD	ME TW-01/0603	59,693
61	Mr. MAHESH BHARARIYA	ME TW-01/1003	58,321
62	Mrs. DEEPTI AGARWAL	ME TW-01/1503	30,352
63	Dr. REKHA AHLUWALIA	ME TW-01/1601	30,485
64	Mr. HIREN MEHTA	ME TW-01/1804	88,325
65	Mrs. VANDITA SAPRA	ME TW-02/0101	69,306
66	Mr. RAJAT KUMAR	ME TW-02/0402	77,401
67	Mr. SHREYANS JAIN	ME TW-02/0502	55,995
68	Ms. ALKA PAUL PIR	ME TW-02/0601	51,858
69	Mr. SAMEER NANDA	ME TW-02/1202	14,567
70	Dr. ZAFFER SALEEM KHANDAY	ME TW-02/1402	59,565
71	Ms. VERTIKA	ME TW-01/0304	62,110
72	Mr. JAGADISH PATHAK	ME TW-01/0404	75,206
73	Mr. SHUBHAM AGARWAL	ME TW-01/0504	70,476
74	Ms. VANITA BHARGAVA	ME TW-01/1201	70,917
75	Mr. MANDEEP SINGH	ME TW-02/0201	111,252
76	Mrs. SANGEETA SHARMA	ME TW-02/0302	33,643
77	Ms. NEETU GOYAL	ME TW-02/0703	54,749
78	Mr. HARJIT HARAR	ME TW-02/1001	163,894
79	Mr. RAJESH BATRA	ME TW-02/1903	33,033
80	Ms. SAIMA JAMAL	ME TW-01/0501	99,469
81	Mr. SURESH KUMAR JHA	ME TW-01/0804	83,964
82	KARAN NANGIA (HUF)	ME TW-01/1001	71,218
83	Mr. ANKUR AGARWAL	ME TW-01/1403	89,889
84	Mr. DUSHYANT GUPTA	ME TW-02/0403	30,487
85	Mr. RAVI KUMAR MAHAJAN	ME TW-02/0702	85,630
86	Mr. ASHISH WAHI	ME TW-02/1002	31,227
87	Mrs. HIMANI SAXENA	ME TW-02/1104	59,565
88	Mr. SAMBIT PATRA	ME TW-02/1203	88,439
89	Ms. NEHA MITTAL	ME TW-02/1401	90,127
90	Mr. JAI VERMA	ME TW-02/1501	11,122
91	Mrs. BIMLA RANI	ME TW-01/0402	72,669
92	Mr. ADITYA TRIPATHI	ME TW-01/0602	52,010
93	Mr. SUBIR MAJUMDER	ME TW-01/0704	114,934
94	Dr. KALPAJEET NATH	ME TW-01/1104	70,917
95	Capt. ASHOK KUREEL	ME TW-01/1203	33,884
96	Mr. ASHISH CHUGH	ME TW-01/1404	31,024
97	Mrs. SANCHALI CHAKRABORTY	ME TW-01/1603	67,744
98	Mr. SARANSH TREHAN	ME TW-01/1803	60,908
99	Mr. ANAND SANSI	ME TW-01/2004	60,864
100	Mr. ARUN KUMAR RAINA	ME TW-02/0501	76,652
101	Mr. GYANENDRA KUMAR SINGH	ME TW-02/0901	74,713
102	Ms. MEGHA BHATIA	ME TW-02/1003	34,071
103	Ms. BARKHA BIRLA	ME TW-02/1702	113,619
104	Ms. NIDHI DHUPAR	ME TW-01/0204	61,175
105	Mr. SIBU MATHEW	ME TW-01/0303	75,105
106	Mr. GAURAV MAHAJAN	ME TW-01/0601	59,033
107	Mr. GAGANDEEP SINGH NANDA	ME TW-01/0801	93,049
108	Ms. HARVIN BAGGA	ME TW-01/0902	95,005
109	Mr. PRATEEK MAJUMDAR	ME TW-01/1204	27,740
110	Mr. KUMARESH RATHOR	ME TW-01/1401	68,901
111	Ms. PUSHPA KAUSHIK	ME TW-01/1402	94,300
112	Ms. RITA PANDEY	ME TW-01/0202	580
113	Ms. RASHMI BHATT	ME TW-01/0102	580
114	Ms. MANJARI TRIPATHI	ME TW-02/0103	580
		Rs. 7460399/-	✓