

BEFORE THE NATIONAL ANTI-PROFITEERING AUTHORITY

UNDER THE CENTRAL GOODS & SERVICES TAX ACT, 2017

Case No. : 37/2022
Date of Institution : 31.08.2020
Date of Order : 19.07.2022

In the matter of:

1. Smt. Sunita Malhotra & Sh. Vijay Malhotra, House No. 223, Sector-11 D, Faridabad-121006.
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 Godrej Project Development Pvt. Ltd., Plot No. 35, 3rd Floor, UM House, Sector-44, Gurugram, Haryana-122006.
2. M/s Magic Info Solutions Pvt. Ltd., D-13, Defence Colony, New Delhi-110024.

Respondents

Quorum:-

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



Present:-

1. Sh. Vijay Malhotra for the Applicant No. 1 in person.
2. Sh. Manish Gaur, Advocate, Sh. Gagan Gugnani, C.A., Sh. Pawan Kabra and Rashi Paliwal, for Respondent No.1.
3. Sh. Tarun Batra, C. A. for Respondent No. 2.

ORDER

The instant Report dated 26.08.2020, received on 31.08.2020 has been furnished by the Applicant No. 2 i.e. Director General of Anti-Profiteering (DGAP) under Rule 129(6) of the Central Goods and Services Tax (CGST) Rules, 2017 pursuant to the Interim Order No. 16/2019 dated 28.11.2019 of the National Anti-Profiteering Authority (NAA or the Authority) in respect of earlier Report of DGAP dated 26.06.2019. The Authority vide said Interim Order had directed the DGAP to reinvestigate the matter under Rule 133 (4) of the CGST Rules 2017 on the following grounds/issues:-

(i) During the hearings, the Respondent No. 01 informed that the land-owner, Respondent No. 02 had 35% share in the project and that he was not aware whether the land-owner had passed on the ITC benefit to his customers or not. It was also clear that one of the Respondents i.e. Respondent No. 01, had availed the entire ITC and hence was required to pass on the commensurate benefits thereof to his recipients. It was not clear to what extent benefit would arise, therefore the computation of the benefit of ITC for the project was required to be re-examined by taking into consideration the Development Agreement dated 05.09.2011 between the Respondent No. 2 and the Respondent No. 1

(ii) The Respondent No. 01 had submitted that there was a difference in ITC figures taken by the DGAP and figures in GSTR-3B Returns in as much as the DGAP had considered eligible ITC for the period July 2017 to August 2018 as Rs.9,99,82,384/- whereas the available ITC was only Rs.7,90,53,619/- as per the GSTR-3B Returns. The said figures of ITC were also required to be verified by the DGAP,

(iii) The Respondent No. 01 had submitted that the Report is based on incorrect assumption that ITC for the period April 2016 to June 2017 pertains to 11 Towers whereas ITC for the period July 2017 to August 2018 pertained exclusively to two Towers i.e. Tower A and Tower L. These submissions of the Respondent No. 01, might also be looked into, and

(iv) The details of reversal of credit in respect of those Towers/Units where Occupancy Certificate had been received might also be revisited.

The brief facts of the present case, are that an application dated 25.01.2018 was filed under Rule 128 of the Central Goods and Services Tax (CGST) Rules, 2017 before the Haryana State Screening Committee on Anti-profiteering by the Applicant No. 1 alleging that the Respondent No. 1 has not passed on the benefit of ITC by way of commensurate reduction in price on flat No. L-204 purchased by him in the Respondent No. 1's project "Godrej Summit" situated at Gurugram, Haryana.

2. The said complaint was examined by the Haryana State Level Screening Committed in its meeting held on 20.06.2018 and on being satisfied, the same was forwarded to the Standing Committee on Anti Profiteering on 27.06.2018, for further action in terms of Rule 128 of the CGST Rules 2017.

3. Further, the above complaint was examined by the Standing Committee on Anti Profiteering in its meetings held on 07.08.2018 & 08.08.2018 and after due consideration it was forwarded to the DGAP for detailed investigation under Rule 129 (1) of the CGST Rules, 2017.

4. On receipt of the said reference from the Standing Committee on 30.08.2019, the DGAP had investigated the matter and submitted his investigation Report dated 27.02.2019 to the Authority. The said report dated 27.02.2019 was considered by the Authority in its meeting held on 05.03.2019 and granted several hearings to the Applicant No. 1 and Respondent No. 1, which were held on 27.03.2019, 11.04.2019, 30.04.2019, 20.05.2019, 29.05.2019 and 13.06.2019. During these hearings and later, the Respondent No. 1 had furnished his submissions dated 27.03.2019, 11.04.2019, 30.04.2019, 20.05.2019, 29.05.2019, 13.06.2019 and 05.07.2019 which were forwarded to the DGAP for clarifications under Rule 133(2A) of the CGST Rules 2017. The DGAP had submitted his Reports dated 30.04.2019, 03.06.2019 and 19.11.2019 to the Authority clarifying the aforesaid submissions of Respondent No. 1.

5. The Authority after carefully examining the DGAP's Report dated 27.02.2019, submissions of the Respondent No. 1 and documents/information placed on record, had remanded the matter back to the DGAP under the provisions of Rule 133 (4) of the CGST Rules 2017, vide Interim Order No. 16/2019 dated 28.11.2019 directing him to further investigate the case on the issues mentioned in paragraph-1.

6. Accordingly the DGAP has submitted instant Report dated 26.08.2020, wherein the DGAP has inter alia stated that:-

(a). After receiving reference from the Authority, M/s. Magic Info Solutions Pvt. Ltd. (Landowners) was impleaded as Respondent No. 2 and letters were issued to the Respondent No. 1 and Respondent No. 2 on 11.12.2019, calling upon them to submit the information/ documents required to re-investigate the matter.

(b). The Authority vide its order dated 26.08.2020 had approved to revise the period covered by the current investigation i.e. from 01.07.2017 to 30.11.2019. He also reported that the time limit of 03 months to submit his report had been extended from 28.02.2020 to 28.05.2020 by the Authority vide Order dated 04.03.2020 which further stood extended upto 31.08.2020 by virtue of Notification No. 35/2020-Central Tax dated 03.04.2020 and Notification No. 55/2020-Central Tax dated 27.06.2020.

(c). In response to above said letters dated 11.12.2019 and subsequent reminders and Summons, the Respondent No. 1 had submitted his replies vide letters/e-mails dated 23.12.2019, 02.01.2020, 13.01.2020, 12.02.2020, 30.05.2020, 10.06.2020 and 17.06.2020.

(d). Vide the above said replies the Respondent No. 1, has stated that:-

(i) He was a Special Purpose Vehicle which was engaged primarily in the construction of the project "Godrej Summit" located in the State of Haryana. For the said project, the Respondent No. 1 had entered into Development Agreement with the Respondent No. 2 under Area Sharing Model. The Respondent No. 1 submitted that they were undertaking a single project "Godrej Summit", the details of which are furnished in Table-'A' below:

Table-'A'

Tower	Units	Saleable Area (in Sq. Ft.)	Date of Completion
Tower- A	70	1,78,655	GST Regime
Tower- L	109	1,94,498	GST Regime
Total	179	3,73,153	
Other Towers (including EWS and Commercial)	1225	1745448	Pre-GST

(ii) The Occupancy Certificates (herein after referred to as "OC") for Towers other than A and L were received in pre-GST regime. The same would be outside the scope of investigation for Anti-profiteering. Further, he stated that the DGAP had restricted his original investigation for Towers A & L only in his Investigation report dated 27.02.2019. The details of Tower A and Tower L are furnished in Table- 'B' as follows:

Table-'B'

Tower	Tower A	Tower L	Total
Units	70	109	179

the Respondent No. 1's Share	45	70	115
the Respondent No. 2's Share	25	39	64
Saleable Area	1,78,655	1,94,498	3,73,153
the Respondent No. 1's Share	1,14,051	1,25,414	239,465
the Respondent No. 2's Share	64,604	69,084	1,33,688
Date of Occupancy Certificate	26-12-2018	26-12-2018	

(iii) His share of units booked under Tower A and Tower L in various periods is mentioned in table-'C' below:

Table-'C'

S. No.	Details	Tower A	Tower L	Total
A.	Number of Units booked as on 30.06.2017	25	61	86
B.	Add: Units booked in GST regime till 25.12.2018	2	1	3
C.	Total units booked before the date of Occupancy Certificate[(A) + (B)]	27	62	89
D.	Unsold Units as on the date of Occupancy Certificate	18	8	26
E.	Total Units [C+D] [Respondent No. 1's Share]	45	70	115

(iv) The details of turnover in pre-GST period and GST period in table-'D' below:

Table-'D'

Project	Turnover	
	Pre-GST Regime	GST Regime
	April 2016 to June 2017 (in Rs.)	July 2017 to November 2019 (in Rs.)
Tower A and Tower L ¹	56,03,78,200	42,02,96,943
Other Towers (including EWS and Commercial) ²	1,99,35,84,249	35,69,01,909
Total	2,55,39,62,449	777,198,852

1. Total turnover mentioned above includes the turnover pertaining to landowner. The turnover relating to area developed for landowner has been computed in the proportion of area of Tower A and Tower L.

2. Total turnover mentioned above includes the turnover pertaining to landowner. The turnover relating to area developed for landowner has been computed in the proportion of area of towers (other than A and L).

(v) The details of CENVAT credit/ input tax credit pertaining to Tower A and Tower L in pre-GST period and GST period is given in table-'E' below:

Table-'E'

Details	Pre-GST Regime	GST Regime
	April 2016 to June 2017 (in Rs.)	July 2017 to November 2019 (in Rs.)
Tower A and L	3,63,59,885	2,50,51,230
Other Towers (including EWS and Commercial)	12,68,07,188	6,87,23,553
Total	16,31,67,073	9,37,74,783
Pertaining to Other Income (Maintenance Services and Development Manager Services)	-	1,15,58,289
Grand Total	16,31,67,073	10,53,33,071
As per ST-3/GSTR-3B	16,31,67,073	10,53,33,071
Difference	-	-

Note: 1. The amount of cenvat credit in pre-GST regime in the service tax returns reflects credit availed for 'Tower A and Tower L' and other Towers. The above figure reflects credit pertaining to 'Tower A and Tower L' which includes specific credit and proportionate common credit. The amount of common cenvat has been apportioned between 'Tower A and Tower L' and other Towers on the basis of saleable area.

2. The amount of input tax credit in GST regime in the GSTR-3B returns reflects credit availed for 'Tower A and Tower L' and other Towers. The above figure reflects credit pertaining to 'Tower A and Tower L' which includes specific credit (after adjustment of reversal of Input Tax Credit for unsold units as on the date of occupation certificate) and proportionate common credit. The amount of common credit has been apportioned between 'Tower A and Tower L' and other Tower on the basis of saleable area.

(vi) He has already passed on the benefit of increased input tax credit to his customer and thus, there was no profiteering. In this regards he further submitted that:-

(a) The essence of anti-profiteering provision is to ensure that the companies, with the introduction of GST, pass on the benefit of reduced output tax rates and increased input tax credits to the customers by way of a commensurate reduction in prices. Section 171(1) of the CGST Act dealing with anti-profiteering provides that any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices.

(b) It could be seen that provision of anti-profiteering requires the registered person to pass on the benefit available on following grounds:

- Reduction in rate of tax on supply of services
- Benefit of input tax credit available in GST regime which was not available in pre-GST regime.

In the instant case, there was no benefit arising on account of reduction in rate of tax on supply of services. Further, with respect to benefit of input tax credit available, the same was dependent upon various factors such as stage of construction, etc.

(c) he has made his estimated computation of additional benefit which has accrued to the Respondent No. 1 in Tower A and Tower L to the tune of 2.25% which has already been passed on to eligible customers of Tower A and Tower L through credit notes or adjustment in tax invoice.

(vii) Comparison of ratio of input tax credit to turnovers for pre-GST

and post-GST periods is not the correct mechanism for calculation of alleged profiteering amount. In this regard, he submitted that:

(a) The method of arriving at profiteering amount by comparing the ratio of input tax credits to the turnovers of Pre-GST and GST period shall never yield the correct quantum of anti-profiteering, if any.

(b) The comparison of above ratios was not appropriate for the reason that under the real estate sector there was no correlation of turnover with the cost of construction or development of a project. The turnover reflected the amount collected as per the payment or booking plans issued by developer which was dependent upon marketing driven strategy. On the contrary, the input tax credit 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 was 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.

(c) The additional input tax credit in his hands in terms of Section 171 of the CGST Act would 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 had not considered the tax cost which was earlier blocked in his hands. Hence, the above approach of comparison of ITCs to turnovers ratios for pre-GST and post-GST periods was not a correct approach and thus, liable to be discarded.

(viii) The amount of profiteering as per the Methodology of comparison of ratio of credits to turnover for pre-GST and post-GST periods was less than the benefit already passed on to the applicant No. 1. In this regard, he submitted that:

He has framed computation based on the methodology adopted by DGAP and the Authority in recent orders. The calculation is reproduced hereunder in two scenarios:

Scenarios-I: Comparison for Tower A and Tower L including details relating to area developed for landowner as furnished in Table- 'F' below:

Table-'F'

S. No.	Particulars	Pre GST	GST
		Apr 16 to Jun 17	July 17 to Nov 19
1	Cenvat Credit of Service Tax Paid on Input Services (A)	3,63,59,885	-
2	Input Tax Credit of GST Availed (Net of reversal as per GSTR-3B) (B)	-	2,63,72,219 ²
3	Total Turnover (C)¹	56,03,78,200	42,02,96,943
4	Total Saleable Area (In Sq. ft) (D) ³	3,73,153	3,14,339 ⁴
5	Total Area Sold relevant to turnover as above (E) ³	2,93,945	3,14,339
6	ITC Relevant to Turnover (F)	2,86,41,888	2,63,72,219
	Ratio of Input Tax Credit to Turnover	5.11%	6.27%
	Profiteering	1.16%	

1. The calculation is based on one-to-one comparison for Tower A and Tower L. The towers were developed under the area-sharing model and therefore, the data relating to the Respondent No. 2's share had also been taken into consideration to make the comparison appropriate and reasonable.

2. This amount reflects the total eligible credit availed by the Respondent No. 1 during the period July 2017 to November 2019. The amount of credit reversed on account of unsold area at the time of issuance of occupation certificate has been deducted to arrive at the amount of eligible input tax credit in hands of the Respondent No. 1.

3. Total turnover mentioned above includes the turnover pertaining to landowner. This is based on the fact that the total credit availed by the Respondent No. 1 relates to total area developed (including the area developed for landowner). Accordingly, the component of total saleable area and total area sold relevant to the turnover (as mentioned in row 4 and 5) shall also include the area pertaining to landowner. Further, the turnover relating to area developed for landowner has been computed in the proportion of area of Tower A and Tower L.

3. Occupancy certificates for the Tower A and Tower L have been issued in the month of December 2018, therefore, the unsold area on the date of issuance of occupancy certificates have been deducted from the total saleable area.

Scenarios-II: Comparison for Tower A and Tower L excluding details relating to area developed for landowner is furnished in Table- 'G' below:

Table-'G'

Sl. No.	Particulars	Pre GST	Post GST
		Apr 16 to Jun 17 ¹	Jul 17 to Mar 19 ¹
1	Cenvat Credit of Service Tax Paid on Input Services (A) ²	2,33,33,378	-
2	Input Tax Credit of GST Availed (Net of reversal as per GSTR-3B) (B) ²	-	1,69,23,952 ³
3	Total Turnover (C)⁴	41,34,01,943	40,59,72,062
4	Total Saleable Area (In Sq. ft) (D) ⁴	2,39,465	180,651 ⁵
5	Total Area Sold relevant to turnover as above (E) ⁴	1,60,257	180,651
6	ITC Relevant to Turnover (F)	1,56,15,381	1,69,23,952
	Ratio of Input Tax Credit to Turnover	3.78%	4.17%
	Profiteering	0.39%	

1. The calculation is based on one-to-one comparison for Tower A and Tower L. The towers were developed under the area-sharing model and the above computation is done ignoring details pertaining to landowner's share of developed area.

2. *The amount of credit in the pre-GST period and in the GST, period reflect the proportionate credit pertaining to area sold to customers other than landowner. The same has been computed by proportionating the net eligible credit with the ratio of area saleable to the customers other than landowner out of total developed area.*
3. *The amount of input tax credit as mentioned in the pre-GST regime and in GST regime (in row 2) reflects the net eligible credit availed by the Respondent No. 1 during the relevant period. The amount of credit reversed ab initio on account of unsold area at the time of receipt of occupation certificate as on 31st March 2019 has been reduced, to arrive at the net amount of eligible input tax credit in hands of the Respondent No. 1.*
4. *Total turnover mentioned above excludes the turnover pertaining to landowner. Also, the component of total saleable area and total area sold relevant to the turnover also exclude the area pertaining to landowner so as to arrive at an appropriate comparison.*
5. *Occupancy certificates for the Tower A and Tower L have been issued in the month of December 2018, therefore, the unsold area on the date of issuance of occupancy certificates have been deducted from the total saleable area.*

in light of the above calculations, the Respondent No. 1 submitted that in case the above methodology of calculation was adopted for "Tower A and Tower L" then, the additional input tax credit accrued to the Respondent No. 1 is less than the benefit already passed on to Applicant No. 1 in both the scenarios. Accordingly, there was no profiteering in the alleged manner and thus, the present proceedings were liable to be dropped.

(ix) In the absence of specified procedure and mechanism of calculation of profiteering, the proceedings are arbitrary and liable to be dropped. In this regard, the Respondent has submitted that:-

(a) The CGST Act read with the Rules does not provide the procedure and mechanism of determination and calculation of profiteering. In absence of such calculation and methodology the proceedings are arbitrary and are in violation of principle of natural justice. Accordingly, the investigation is liable to be dropped.

(b) The Central Government vide Notification No. 10/2017-Central Tax dated 28.06.2017 (amending Notification No. 3/2017-Central Tax) notified Anti-profiteering rules which provide for constitution of Authority, Standing Committee and Screening committee, power to determine the methodology and procedure, duties of Authority, examination of applications, order of the authority, compliance by the registered person etc.

(c) The Rule 126 of the Rules contains provisions regarding the power of the Authority to determine the methodology and procedure for determination as to whether the reduction in rate of tax on the supply of goods or services or the benefit of input tax credit has been

passed on by the registered person to the recipient by way of commensurate reduction in prices. It is important to note that as on date, CGST Rules have not prescribed any procedure/methodology/formula/modalities for determining/calculating 'profiteering'. Whether such computation must be done invoice-wise, product-wise, business vertical-wise or entity-wise is not prescribed under the law. The Authority under the Goods & Services Tax Methodology and Procedure, 2018 issued on 19.07.2018, has merely provided the procedure to be followed pertaining to the investigation and hearing. Thus, in absence of the same, it was impossible for the Respondent No. 1 to defend his case and explain how the observations and findings of the complainant were incorrect, thus, violating the principles of natural justice.

(d) In the case of *Eternit Everest Ltd. vs. UOI, 1997 (89) E.L.T. 28 (Mad.)*, where the Hon'ble High Court of Madras held that in the absence of machinery provisions pertaining to determination and adjudication upon a claim or objection, the statutory provision will not be applicable.

(e) In the case of *Commissioner of Income Tax, Bangalore vs. B.C. Srinivasa Setty, (1981) 2 SCC 460*, the Hon'ble Supreme Court held that charging section was not attracted where corresponding computation provision is inapplicable. Relying on the case of BC Srinivas Shetty, Hon'ble Allahabad High Court in the case of *Samsung (India) Electronics Pvt. Ltd. vs. Commissioner of Commercial Taxes U.P. Lucknow, 2018[11] G.S.T.L. 367* observed that in the absence of any procedure or provision in the UP VAT Act, 2008 Act conferring such authority, in the case of a sale of composite packages bearing a singular MRP, the authorities under the Act could not possibly assess the components of such a composite package separately. Such an exercise, if undertaken, would also fall foul of the principles enunciated by the Hon'ble Supreme Court. In this regard, reliance has been placed on the case of *Union of India vs. Suresh Kumar Bansal 2017 (4) G.S.T.L. J128 (S.C.)*, wherein it was confirmed by the Hon'ble Court that explanation added to Section 65(105) (zzzh) of the Finance Act, 1994 vide the Finance Act, 2010

expanding scope of taxability of Construction of Complex intended for sale by builders, was ultra vires as there was no statutory mechanism to ascertain value of service component of subject levy.

(f) On the basis of the aforementioned discussions, in the absence of prescribed method/formula for calculation of profiteering, following a method on case-to-case basis was arbitrary and thus, the investigation was liable to be set aside.

(x) The investigation could not go beyond the applications submitted by Sh. Vijay Malhotra and Smt. Sunita Malhotra. In this regard, the Respondent has stated that:-

(a) In terms of Section 171 of the CGST Act read with Rule 128 of the Rules, an anti-profiteering investigation could be initiated only on receipt of written application from the interested party, Commissioner or any other person. In the instant case, the proceedings were started with the application received from the Applicant No. 1. The said application was filed by Sh. Vijay Malhotra and Smt. Sunita Malhotra, hence, the investigation could not go beyond the application and cover other customers also who have not questioned the benefit passed on to them. In this regard, he has placed reliance on the following orders of the 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:

(i) *M/s U. P. Sales & Services vs. M/s Vrandavaneshwree Automotive Private Limited 2018-VIL-01-NAA*: In this case, the applicant had filed an application alleging that the supplier had not passed on the benefit of reduced rate of tax on Honda Car having Model No. WR-V 1.2 VX MT (i-VTEC) purchased by the applicant. The Authority in this case while holding that the supplier has not contravened the provisions of Section 171 of the CGST Act, 2017 limited its enquiry and order, only to the particular model of car.

(ii) *Shri Rishi Gupta vs. M/s Flipkart Internet Pvt. Ltd. 2018 VIL-04-NAA*: In this case, the applicant had filed an application stating that he had paid extra amount for Godrej Interio Slimline Metal Almirah to the supplier and by not refunding the same, the

supplier was resorting to profiteering in contravention of Section 171 of the CGST Act. The Authority while holding that the supplier has not contravened the provisions of Section 171 of the CGST Act, 2017 limited its enquiry and order, only to the particular model of almirah.

(b) The DGAP cannot *suo moto* assume jurisdiction with regard to his other recipients, on receipt of reference from the Standing Committee to conduct a detailed investigation in the matter of Applicant No. 1. He could not exceed his jurisdiction by submitting his findings for other unit buyers and recipients who had not filed any application.

(c) The application filed by a dissatisfied Applicant No. 1 might be compared to a show cause notice for a tax proceeding wherein the assessee was required to show as to why tax, interest, penalty, etc. should not be levied and collected from him. It was settled principle of law that an order adjudicating a show cause notice could not travel beyond the scope of a show cause notice. In this regard reliance has been placed on the case of *Toyo Engineering India Limited vs. Chief Commissioner, Mumbai 2006 (201) E.L.T. 513 (S.C.)* wherein the Hon'ble Supreme Court held that the Department could not travel beyond the show cause notice. The extract of the relevant portion of the judgment has been provided below for quick reference:

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 appellate 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)

(d) Similarly, in the case of *Reckitt & Colman of India Ltd. vs. Chief Commissioner of Excise 1996 (88) E.L.T. 641 (S.C.)* it was held by the Hon'ble Supreme Court that the Revenue authorities could not make an order against an assessee that was 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)

(e) Like an order cannot travel beyond a show cause notice, the investigation and report of the DGAP, could not go beyond the application which acted as a basis of the investigation.

(f) In 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 de hors the directions given and was *ultra vires* the scope of investigation. The extract of the relevant portion of the judgement is as follows:

"Thus, 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.

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

(g) In the light of the aforementioned discussion, the Report should be restricted to the Applicant No. 1 who has filed application to the concerned Committee.

8. The DGAP has further submitted that apart from the above, during the personal hearing held before the Authority, the Respondent No. 1, has submitted:-

(a) That the project “Godrej Summit” has 11 towers. Except Tower A and Tower L, Occupancy Certificates have been received for all the other towers in Pre-GST regime itself.

(b) That the entire ITC availed by him pertained to total area including the area pertaining to landowner against which he has duly passed on the benefit which has accrued to the Respondent No. 2 pertaining to the area given to landowner.

(c) That the DGAP has taken into consideration the amount of GST collected from the homebuyers which the Respondent No. 1 has duly deposited to the Government and the same has not been retained by the Respondent No. 1 with it. Thus, it was irrational to allege that the Respondent No. 1 has profited to that extent.

9. Vide the aforementioned letters and e-mails, the Respondent No.1 submitted the following documents/information:

- a. Copies of GSTR-1 returns for the period July, 2017 to Nov, 2019.
- b. Copies of GSTR-3B returns for the period July, 2017 to Nov, 2019.
- c. Electronic Credit Leger for the period July, 2017 to Nov, 2019.
- d. Copies of VAT & ST-3 returns for the period April, 2016 to June, 2017.
- e. Copy of RERA Registration and Project Report submitted to RERA including all periodic progress reports submitted till November, 2019.
- f. Occupancy Certificate for the towers other than A and L received vide Memo No. ZP-802/SD(BS)/2017/6649 dated 07.04.2017 and Memo No. ZP-802/SD(BS)/2017/13753 dated 20.06.2017.
- g. Status of Tower A and L as on 31.08.2018 and 30.11.2019 along with copy of Occupancy Certificate received on 26.12.2018 vide Memo No. ZP-802/AD(RA)/2018/34958.
- h. List of home buyers for the Tower A and L in the project “Godrej Summit” along with customer wise details of benefit passed on.
- i. CENVAT/ITC register for the FY 2016-17, 2017-18, 2018-19 and 2019-20 reconciled with ST-3 and GSTR-3B returns along with Summary

for Tower A and L.

- j. Copies of Credit Notes/tax Invoices of all the Home Buyers including Landowner by which benefit of input tax credit has been passed on.
- k. Sample Copies of undertaking from the Home buyers including land owner that benefit of input tax credit has been passed on.
- l. Details of reversal of CENVAT/ITC on unsold units at the time of receipt of OC.
- m. Copy of the Agreement dated 05.09.2016 between the Land Owner and the Respondent No. 1 for the project "Godrej Summit".

10. The Respondent No.1 has also submitted following documents/ information before the Authority: -

- a. Details of benefits from Awarded Contract, Un-awarded Contract and SBC (Service portions) arising under Tower A and Tower L in the project "Godrej Summit".
- b. Summarized detail of inputs on which input tax credit availed by the Respondent No.1 during the period from April 2016 to March 2019 for the project "Godrej Summit".
- c. Details of cost of construction of the project during the period from April 2016 to March 2019 for the project "Godrej Summit".
- d. Summarized detail of ITC benefit passed on in other projects.
- e. Different Scenarios for the computation of ratios considering different periods.

11. The Respondent No. 1 had requested the DGAP to consider all the details/documents/information in a confidential manner in terms of Rule 130 of the Rules.

12. In response to above said letter dated 11.12.2019 and subsequent reminders of the DGAP, the Respondent No. 2 has submitted his reply vide letters/e-mails dated 23.12.2019, 15.01.2020, 08.06.2020 and 12.06.2020 stating that he was a company incorporated under the Companies Act and was owner of the land on which the Respondent No. 2 entered into a Development Agreement with the

Respondent No. 1 to develop the project "Godrej Summit" at Setcor-104, Gurugram (Haryana). The project was being developed by the Respondent No. 1 and the Respondent No. 2 has a share of 35% in the total saleable area of the apartments in the project.

13. Vide the aforementioned letters and e-mails, the Respondent No. 2 submitted the following documents /information to the DGAP;

- a. Copies of GSTR-1 returns for the period July, 2017 to Nov, 2019.
- b. Copies of GSTR-3B returns for the period July, 2017 to Nov, 2019.
- c. Electronic Credit Leger for the period July, 2017 to Nov, 2019.
- d. Copies of ST-3 returns for the period April, 2016 to June, 2017.
- e. Details of tower-wise sold and unsold units along with copies of OC for all the project "Godrej Summit".
- f. List of home buyers for the project "Godrej Summit" along with customer wise details of benefit passed on.
- g. CENVAT/ITC register for the FY 2016-17, 2017-18, 2018-19 and for the period April 2019 to Nov., 2019 reconciled with ST-3 and GSTR-3B returns.
- h. Copies of Credit Notes/Payment vouchers by which benefit of input tax credit has been passed on.
- i. Copy of the Agreement dated 05.09.2016 between the Land Owner and the Respondent No. 1 for the project "Godrej Summit".

and he had not classified any of its information/documents as confidential in terms of Rule 130 of the Rules.

14. However, on receipt of above said Interim Order No. 16/2020 from the Authority, the DGAP had examined the various replies of Respondent No. 1 & 2 and the documents/evidences on record in respect of the project "Godrej Summit" and submitted that:-

- (i) The Respondent No. 1 had total 11 towers in the impugned project out of which 09 towers were completed in Pre-GST regime and two towers – A & L were not completed on the introduction of GST w.e.f. 01.07.2017. The

Respondent No. 1 has obtained RERA registration vide Memo No. HRERA (Reg.)146/2017/397 dated 21.08.2017 for these two towers A & L only as RERA was not applicable for the towers where OCs were received prior to 01.07.2017. Applicant No. 1 had filed his application w.r.t. flats no. L-0204 and A-0801 situated in tower- A & L only.

(ii) The said construction services have been provided by the Respondent No. 1 and 2 in the State of Haryana only.

(iii) The Respondent No. 1 maintained separate books of accounts for each tower for booking of specific purchase & expenses. Since, the reference received from the Standing Committee for initiation of investigation pertained to RERA registration (taken for A & L) and also OCs for others towers were received in Pre-GST regime, present investigation covered the units in Towers A & L only.

(iv). Para 5 of Schedule-III of the Central Goods and Services Tax 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, of the Central Goods and Services Tax Act, 2017 as "construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier"*". Thus, the input tax credit pertaining to the residential units and commercial shops which were under construction but not sold was provisional input tax credit which may be required to be reversed by the Respondent No. 1, if such units remained unsold at the time of issue of the completion certificate, in terms of Section 17(2) & Section 17(3) of the Central Goods and Services Tax Act, 2017 as Section 17 (2) "*Where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies"*".

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

Therefore, the input tax credit pertaining to the unsold units may not fall within the ambit of this investigation. However, in the present case, the Respondent No. 1 has received OCs for all Units and the Respondent No. 1 has reversed ITC towards unsold units. Therefore, the input tax credit availed post-GST period (after reversal) pertained to sold units only.


(v) The approach of comparison of ITCs to turnover ratios for pre-GST and post-GST periods, had direct relation of input tax credit availed with that of output tax to be paid, as the use of input tax credit was only towards making payment of its output liability and no refund of unutilised input tax credit could be allowed under Section 54(3) of the Central Goods and Services Tax Act, 2017.

(vi) On contention of the Respondent No. 1 that absence of prescribed method/formula for calculation of profiteering and following a method on case-to-case basis was arbitrary and thus, the investigation was liable to be set aside was wrong, the DGAP has submitted that the "Methodology and Procedure" has been notified by the Authority vide its 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 are enshrined in Section 171 (1) of the CGST Act, 2017 itself which states that "*Any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices.*" It is clear from the perusal of the above provision that it mentions "reduction in the rate of tax on any supply of goods or services" which does not mean that the reduction in the rate of tax is to be taken at the level of an entity/group/company for the entire supplies made by it. Therefore, the benefit of tax reduction has to be passed on at the level of each supply of Stock Keeping Unit (SKU) to each buyer of such SKU and in case it is not passed on the profiteered amount has to be calculated on each SKU.

Therefore, the contention that the profiteered amount should be computed at the entity/group/company level is untenable. Further, the above Section mentions "any supply" i.e. each taxable supply made to each recipient thereby clearly indicating that netting off of the benefit of tax reduction by any supplier is not allowed. A supplier cannot claim that he has passed on more benefit to one customer therefore he could pass less benefit to another customer than the benefit which is actually due to that customer. Each customer is entitled to receive the benefit of tax reduction on each product purchased by 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 has to be computed in respect of each supply based on the benefit of input tax credit as well as the existing base price (price without GST) of the supply. The computation of commensurate reduction in prices is purely a mathematical exercise which is based upon the above parameters and hence it would vary from product to product and hence no fixed mathematical methodology can be prescribed to determine the amount of benefit which a supplier is required to pass on to a recipient or the profiteered amount. However, to give further clarifications and to elaborate upon the legislative intent behind the law, the Authority has 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 are 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 of inputs, rates of taxes, amount of ITC availed, total saleable area, area sold and the taxable turnover realised before and after the GST implementation would always be different than the other project and hence the amount of benefit of additional ITC to be passed on in respect of one project would not be similar to 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 are issued. Therefore, no set parameters can 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 are 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 will in fact lead to erosion of justice in the name of uniformity.

In light of above facts, quantum of profiteering is determined by the DGAP by taking into account the particular facts of each case. Hence, there cannot be one-size-fits-all mathematical methodology.

(viii) On contention of the Respondent No. 1 that the investigation cannot go beyond the applications submitted by the Applicant No. 1, DGAP has stated that the reference is made to Section 171(1) of the Central Goods and Services Tax Act, 2017 which reads as "*Any reduction in rate of tax on **any supply** of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices.*" Thus, the legal requirement is abundantly clear that in the event of a benefit of Input Tax Credit or reduction in rate of tax, there must be a commensurate reduction in *prices* of the **any supply** of goods or services. 

Further, as the 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, he is justified in examining all the supply made by the Respondent No. 1 beyond the application filed by the Applicant No. 1.

(viii) On contention of the Respondent No. 1 that the GST is included in profiteered amount, the DGAP has stated that Section 171 of the CGST Act, 2017 read with Chapter XV of the Rules, requires the supplier of goods or services to pass on the benefit of tax rate reduction or input tax credit to the recipients by way of commensurate reduction in price. Price includes both the base price and the tax paid on it. If any supplier has charged more tax from the recipients, the aforesaid statutory provisions would require that such tax amount be refunded to the eligible recipients or alternatively deposited in the Consumer Welfare Fund, regardless of whether such extra tax collected from the recipient has been deposited in the Government

account or not. Besides, any extra tax returned to the recipients by the supplier by issuing credit note can be declared in the return filed by such supplier and his tax liability shall stand adjusted to that extent in terms of Section 34 of the CGST Act, 2017. Therefore, the option was always open to the Respondent No. 1 to return the tax amount to the recipients by issuing credit notes and adjusting his tax liability for the subsequent period to that extent.

15. Further on allegation of profiteering, the Respondent No. 1 claimed that subsequent to enactment of GST w.e.f. 01.07.2017, he made his estimated computation of additional benefit which has accrued to him in Tower A and Tower L which was depending upon various factors such as stage of construction etc. and passed on the same to eligible customers through credit notes or adjustment in tax invoices. Further, he had submitted Customer-wise details of such benefit claimed to have been passed on along with documentary evidences. In this regard, the DGAP has observed from the documents submitted on 12.02.2020 by the Respondent No. 1 that an amount of Rs. 1,06,323/- (inclusive of the GST) has been given to the Applicant No. 1 on account of benefit arising out of Input Tax Credit as per details furnished in table- 'H' below:

Table-'H'

S. No.	Nature of Document	Document No.	Document Date	Amount of benefit passed on (in Rs.)
1	Credit Note	CN0150000044	20.02.2018	23,309
2	Credit Note	CN0150000067	21.06.2018	29,136
3	Tax Invoice	CI0150000911	09.01.2019	50,979
4	Tax Invoice	CI0150000912	09.01.2019	2,899
Total				1,06,323

However, the correctness of the amount of benefit so passed on by the Respondent No. 1, has to be determined in terms of Rule 129(6) of the Rules. Therefore, the input tax credit available to the Respondent No. 1 and the taxable amount received by him from the Applicant No. 1 and other recipients post implementation of GST, have to be taken into account for determining the benefit of input tax credit required to be passed on.

16. The DGAP has informed that vide e-mails dated 30.07.2020, the Applicant No. 1 confirmed the receipt of two Credit Notes mentioned at S. No. 1 & 2 of above Table-'H'. However, the Applicant No. 1 was expecting to receive the benefit in their Bank Account and misunderstood it with the Statement of Account enclosed by him vide e-mail dated 30.07.2020. He further stated that the remaining

two amounts of Rs. 50,979/- & Rs. 2,899/- were adjusted in tax invoices no. CI0150000911 & CI0150000912 respectively raised on 09.01.2019 but did not appear in the statement of account. The DGAP has also submitted that the Applicant No. 1 submitted that he has not paid the Instalments raised on 09.01.2019 and filed a case in the National Consumer Disputes Redressal Commission (NCDRC) for defective possession offer. The Applicant No. 1 has also pointed out certain deficiencies in the facilities promised and provided by the Respondent No. 1.

17. In this regard, the DGAP has reviewed the statement of account enclosed by the Applicant No. 1 with his mail (also submitted by the Respondent No. 1 in his earlier submissions dated 12.02.2020), and observed that both the invoices i.e. CI0150000911 & CI0150000912 dated 09.01.2019 appear in the statement of account and it is specified in the invoices that GST Credit of Rs. 50,979/- & Rs. 2,899/- is given against the Charged Amount, therefore, it is established from the documentary evidences that the benefit of Rs. 50,979/- & Rs. 2,899/- was duly adjusted in the aforesaid invoices CI0150000911 & CI0150000912 raised on 09.01.2019 and was appearing in statement of account, although the same were not paid by the Applicant No. 1. The detailed computation and reconciliation of invoices with Statement of A/c is furnished as below:

Table-'I' (Invoice No. CI0150000911 dated 09.01.2019)

S.No.	Particular	Amount as per Agreement	Benefit of 2.25%	Net Amount
1	Basic Sale Price (BSP) (A)	20,35,736	45,804	19,89,932
2	Car Parking Charges (B)	2,30,000	5,175	2,24,825
3	Preferential Location Charges (C)	45,400	-	45,400
4	Total Charge Amount (D)=(A+B+C)	23,11,136*	50,979	22,60,157
5	CGST + SGST (E)			2,84,708
6	Total Invoice Value (F)=(D+E)			25,44,865
7	As per Statement of Account (G)			25,44,865
8	Difference (H)=(E-G)			-

Table-'J' (Invoice No. CI0150000912 dated 09.01.2019)

S.No.	Particular	Amount as per Agreement	Benefit of 2.25%	Net Amount
1	Association Formation Charges (A)	3,000	68	2,933
2	Club Membership Fee (B)	45,000	1,013	43,988
3	Electrification Charges (C)	36,320	817	35,503
4	Power Backup Charges (D)	37,500	844	36,656
5	Legal & Admin. Charges (E)	7,000	158	6,843
6	IFMS (F)	18,160	-	18,160
7	Total Charge Amount p(G)=(A+B+C+D+E+F)	1,46,980*	2,898	1,44,082
8	CGST + SGST (H)			22,666
9	Total Invoice Value (I)=(G+H)			1,66,748
10	As per Statement of Account (J)			1,66,749
11	Difference (K)=(I-J)			-1

Note: The amount has been verified from the Agreement as well immediate previous instalment (5th instalment raised on 28.01.2018) as the 5th and 6th Instalments are equal i.e. 20% each of total agreement value.

18. Further, on the basis of revised information and documents submitted by the Respondent No. 1 and the Respondent No. 2, the DGAP has observed that prior to 01.07.2017, i.e. before the GST was introduced, the Respondent No. 1 was eligible to avail CENVAT credit of Service Tax paid on Services but no credit was available in respect of Central Excise duty and VAT paid on the inputs. However, post-GST, the Respondent No. 1 could avail input tax credit of GST paid on all the inputs and the input services including the sub-contracts and further from the information submitted by the Respondent No. 1 for the period April, 2016 to November, 2019, the details of the input tax credits availed by him, his turnovers from the project "Godrej Summit", the ratios of input tax credits to turnover, during the pre-GST (April, 2016 to June, 2017) and post-GST (July, 2017 to November, 2019) periods, are furnished in Table-'K' below.

Table-'K'

(Amount in Rs.)

S. No.	Particulars	April, 2016 to June, 2017 (Pre-GST)	July, 2017 to Nov., 2019 (Post-GST)
1	CENVAT of Service Tax Paid on Input Services as per CENVAT Register reconciled with ST-3(A)	3,63,59,885	-
2	Input Tax Credit of VAT Paid on Purchase of Inputs (B)	-	-
3	Input Tax Credit of GST Available as per ITC Register reconciled with GSTR-3B(C)	-	4,28,04,787
4	Net CENVAT/Input Tax Credit Available (D)= (A+B) or (C)	3,63,59,885	4,28,04,787
5	Total Turnover as per List of Home Buyers including Landowner (Net of Cancellation) (E)	52,53,96,326	38,70,06,117
6	Total Saleable Area net of unsold on receipt of OC (in SQF) (F)	3,73,153	3,73,153
7	Total Sold Area including Landowner's Area relevant to Turnover (Net of Cancellation) (G)	1,99,688	1,76,971
8	Relevant CENVAT/ITC [(H)= (D)*(G)/(F)]	1,94,57,522	2,03,00,536
9	Ratio of CENVAT/Input Tax Credit to Turnover [(I)= (H)/(E)]	3.70%	5.25%

* Note-1: Since the Respondent No. 1 have availed the entire CENVAT/Input Tax Credit for the project (including units pertaining to the Respondent No. 2), therefore CENVAT/ITC availed in the Respondent No. 1's books considered in above table. However, turnover of the Respondent No. 2 is included at S.No. 5 as the Respondent No. 2 is also required to pass on the benefit to it's recipients.

Note-2: The difference in ITC as above and as submitted by the Respondent No. 1 in table-'F' above is on account of consideration of total ITC reversed (including Pre-GST) on account of unsold area at the time of issuance of OC.

Note-3: The difference in total turnover as above and as submitted by the Respondent No. 1 in table-'F' above is on account of units cancelled by the home buyers.

19. The DGAP has claimed that from the Table- 'K', it is clear that the input tax credit as a percentage of the turnover that was available to the Respondent No. 1

during the pre-GST period (April, 2016 to June, 2017) was 3.70% whereas during the post- GST period (July, 2017 to November, 2019), the percentage was 5.25%. This clearly confirms that post-GST, the Respondent No. 1 has benefited from additional input tax credit to the tune of 1.55% [5.25% (-) 3.70%] of the turnover. Accordingly, the profiteering has been examined by comparing the applicable tax rate and input tax credit available in the pre-GST period (April, 2016 to June, 2017) when Service Tax @4.50% was payable with the post-GST period (July, 2017 to November, 2019) when the effective GST rate was 12% (GST @18% along with 1/3rd abatement for land value) on construction service, vide Notification No.11/2017-Central Tax (Rate), dated 28.06.2017. Accordingly, on the basis the figures contained in Table-‘K’ above, the comparative figures of the ratios of input tax credits availed/available to the turnovers in the pre-GST and post-GST periods as well as the turnovers, the recalibrated base price and the excess realization (profiteering) during the post-GST period, are tabulated in Table- ‘L’ below:

Table-‘L’

(Amount in Rs.)

S. No.	Particulars		Post- GST
1	Period	A	After 01.07.2017
2	Output GST Rate (%)	B	12.00
3	Ratio of CENVAT credit/ Input Tax Credit to Total Turnover as per table - 'I' above (%)	C	5.25
4	Increase in input tax credit availed post-GST (%)	D= 5.25% less 3.70%	1.55
5	<u>Analysis of Increase in input tax credit:</u>		
6	Total Base Price raised/collected during July, 2017 to November, 2019 (Rs.) by the Respondent No. 1	E	36,05,49,555
7	Total Base Price raised/collected during July, 2017 to November, 2019 (Rs.) by the Respondent No. 2	F	2,64,56,562
8	Total Base Price raised/collected during July, 2017 to November, 2019 (Rs.)	G=E+F	38,70,06,117
9	GST @ 12% over Base Price	H=G*12%	4,64,40,734
10	Total amount collected/raised by the Respondent No. 1 and the Respondent No. 2	I=G+H	43,34,46,851
11	Recalibrated Base Price	J= (G)*(1-D) or 98.45% of (G)	38,10,07,522
12	GST @ 12%	K=J*12%	4,57,20,903
13	Commensurate demand price	L=J+K	42,67,28,425
14	Excess Collection of Demand or Profiteering Amount	M=I-L	67,18,426

20. In view of the Table-‘L’ above, DGAP has deduced that the additional input tax credit of 1.55% of the turnover should have resulted in commensurate

reduction in the base price as well as cum-tax price. Therefore, in terms of Section 171 of the Central Goods and Services Tax Act, 2017, the benefit of such additional input tax credit was required to be passed on by the Respondent No. 1 to the respective recipients accordingly. From the above calculation, it is evident that on the basis of the aforesaid CENVAT/input tax credit availability in the pre and post-GST periods and the details of the amount raised/collected by the Respondent No. 1 from the Applicant No. 1 and other home buyers during the period 01.07.2017 to 30.11.2019, the Respondent No. 1 had benefited by an additional amount of input tax credit, by an amount of Rs. 67,18,426/- which includes GST @12% on the base amount of Rs. 59,98,595/- which was required to be passed on to the eligible home buyers. The buyers and unit no. wise break-up of this amount is given in Annexure-A. The said amount is inclusive of the amount of Rs. 80,722/- (including GST on the base amount of Rs. 72,073/-) and Rs. 4,59,286/- which includes GST @12% on the base amount of Rs. 4,10,077/- which are the benefits of input tax credit required to be passed on to the Applicant No. 1 and to the Respondent No. 2 (for share of his Units) respectively.

21. The claim of the Respondent No. 1 that he had passed on the benefit of ITC amounting to Rs. 1,17,37,843/- to the 84 home buyers (net of cancelled units) and to the Respondent No. 2, has been verified by the DGAP from copies of Credit Notes, tax invoices for all the home buyers and sample copies of undertakings from home buyers which were furnished by the Respondent No. 1 vide his submission dated 12.02.2020 and found to be correct and also summary of category-wise input tax credit benefit required to be passed on and the benefit passed on, is mentioned in Table-'M' below.

Table-'M'

(Amount in Rs.)

S. No.	Category of Customers	No. of Units	Area (in Sqft)	Amount Raised/ Received (Post GST)	Benefit to be passed on as per Annex-22	Benefit Passed on by the Respondent No. 1	(Excess)/ Shortage of Benefit (profiteering)	Remark
A	B	C	D	E	F	G	H=F-G	I
1	Applicant No.1	1	1,816	46,49,912	80,722	1,06,323	(25,600)	Excess Benefit passed on. List Attached as Annex-23
2	Buyers other than Applicant No. 1 (Developer)	83	1,67,835	35,58,99,643	61,78,418	84,14,264	(22,35,846)	Excess Benefit passed on. List Attached as Annex-23
3		5	11,000	4,54,22,505	-	-	-	Units cancelled as on 30.11.2019. No benefit to be passed on.
4		26	58,814	-	-	-	-	Unsold Units
5	Buyers other than Applicant No. 1 (Land owner)	4	7,320	2,64,56,562	4,59,286	32,17,256	(27,57,970)	Excess Benefit passed on.
6		21	43,571	-	-			No Consideration received post-GST.
7		1	1816	48,70,680	-			Unit Sold Post receipt of OC.
8		38	80,981	-	-			Unsold Units
	Total	179	3,73,153	43,72,99,302	67,18,426	1,17,37,843	(50,19,417)	

22. From the Table 'M', the DGAP has observed that the benefit passed on by the Respondent No. 1 is higher than what he should have passed on, in respect of all the home buyers (Sr. 1, 2 & 5 of above table) by an amount of Rs. 50,19,417/-.

He has further submitted that though there was contravention of the provisions of Section 171 of the Central Goods and Services Tax Act, 2017 but the Respondent No. 1 has rectified his mistake and passed on the benefit of Input tax credit to all the home buyers therefore Section 171 of the Central Goods and Services Tax Act, 2017 may not be invoked against the Respondent No. 1 in the present case.

23. The DGAP has submitted point wise replies to the issues (mentioned at para 1) raised by the Authority vide it's aforementioned order dated 28.11.2019, are as under:

(i) On the issue mentioned at para 1 (i), it is submitted that the Respondent No. 1 has passed on benefit of Rs. 32,17,256/- to the Respondent No. 2 with regard to units in Tower A & L pertaining to him via credit notes dated 28.04.2019 & 30.04.2019 which the Respondent No. 2 has acknowledged to receive and submitted an undertaking of the same on 12.02.2020 to the DGAP. Although the Respondent No. 2 has further passed on an amount of Rs. 97,665/- to 4 recipient to whom demand was raised or payment received during the period 01.07.2017 to 30.11.2019 which have been verified by DGAP from the Credit Notes/Payment Vouchers submitted by the Respondent No. 2, the benefit passed on is less than what he ought to have passed on by an amount of Rs. 3,61,621/-. The details of these amounts are given in Table-'N' below:

Table-'N' (Amount in Rs.)

S. No.	Name of Customers	Unit No.	Saleable area as per agreement	Demand raised & Advance received during 01.07.2017 to 30.11.2019 (Excluding Taxes) (inRs.)	Benefit to be passed on	Benefit Passed on by the Respondent No. 2	(Excess)/ Shortage of Benefit (profiteering)
A	B	C	D	E	$F=E*1.55\%*112\%$	G	H=F-G
1	Dimension Hotels & Resorts Pvt. Ltd.	L1204	1816	75,27,696	1,30,681	3,032	1,27,649
2	Richa Chauhan	L1206	1844	6,75,710	11,730	5,587	6,143
3	Suresh Vyas/Raju Vyas	L1501	1816	73,56,856	1,27,715	2,959	1,24,756
4	Harpreet Singh	L706	1844	1,08,96,300	1,89,160	86,087	1,03,073
Total					4,59,286	97,665	3,61,621

Therefore, the Respondent No. 2 is required to pass on the further benefit of Rs. 3,61,621/- as per above table.

(ii) On the issue mentioned at para 1 (ii) it is submitted that the ITC for the period July 2017 to August 2018 as per GSTR-3B Returns was Rs. 9,99,82,384/- whereas the Respondent No. 1 claimed ITC was only Rs. 7,90,53,619/- during this period. The difference of Rs. 2,09,28,765/-

(Rs. 9,99,82,384/- less Rs. 7,90,53,619) was due to ITC reversed by the Respondent No. 1 and reported in Output liability of Outward taxable Supply in Table 3.1 in GSTR-3B Return in the month of March, 2018 which the Respondent No. 1 has rectified in his Annual Return GSTR-9 for FY 2017-18 filed on 30.01.2020. The same has been verified by DGAP from reconciliation of GSTR-3B and GSTR-1 Returns for the month of March, 2018, as well from Annual Return GSTR-9 and the Respondent No. 1 has submitted CA Certificate also in this regard therefore, the difference has been verified and has been rectified.

(iii) On the issue mentioned at para 1 (iii), it is submitted that the submission of the Respondent No. 1 w.r.t. correction of ITC for Tower A & L has been examined and revised report has been prepared accordingly.

(iv) On the issue mentioned at para 1 (iv) it is submitted that the DGAP has examined the reversal of Credit availed from 01.04.2016 till date of receipt of OC which is part of proportionate credit reversed by the Respondent No. 1 on account of unsold units availed from beginning of the project till date of receipt of OC and found to be correct. Further, DGAP's investigation report dated 27.02.2019 covered the period from 01.07.2017 to 31.08.2018, whereas Respondent No. 1 received the OC on 26.12.2018 which is after the period of Investigation however, the DGAP has extended the period of investigation by another 15 months i.e. till 30.11.2019 to consider the Authority's direction of reversal of input tax credit on receipt of OC and recomputed the revised profiteering amount accordingly.

24. The DGAP has calculated the additional benefit of input tax credit to the tune of 1.55% of the turnover, which has accrued to the Respondent No. 1 in post-GST and the same was required to be passed on by the Respondent No. 1 to the Applicant No. 1 and other recipients. On this account, the Respondent No. 1 had benefited by an amount to the tune of Rs. 67,18,426/- from the Applicant No. 1 and other recipients who are not Applicants in the present proceedings. However, as mentioned in Table-'M', the Respondent No. 1 has passed on an amount of Rs. 85,20,587/- to 84 home buyers from whom consideration has been received by the Respondent No. 1 during the period 01.07.2017 to 30.11.2019 and Rs. 32,17,256/- to the land owner i.e. the Respondent No. 2.

25. In view of the above findings of the DGAP, he has submitted that Section 171(1) of the Central Goods and Services Tax Act, 2017, requiring that "any

reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices”, may not be invoked against the Respondent No. 1 in the present case. However, the same is required to be invoked against the Respondent No. 2.

26. On receipt of the above said DGAP’s report dated 26.08.2020, the Authority had issued Notice dated 07.09.2020 to the Respondent No. 2 directing him to explain why the above said Report should not be accepted and his liability for profiteering should not be determined under section 171 of the CGST Act 2017. In response of the Authority’s Notice dated 07.09.2020, the Respondent No. 2 has furnished his reply dated 25.09.2020 to the DGAP’s Report dated 26.08.2020 wherein the Respondent No. 2 has *inter alia* stated that:-

(a) His company had entered into a Joint Development Agreement with the Respondent No. 1 for construction of project “Godrej Summit”.

(b) The land was owned by him and the project was developed by the Respondent No. 1. He had 35% share in the project.

(c) At the time of investigation, in the month of April 2019, the Respondent No. 1 had passed on the benefit under GST regime of Rs. 1,38,64,891/-, out of which the benefit amounting to Rs.32,17,256/- was passed on in respect of Tower A and L to 64 units. On the basis of working which was submitted to the DGAP the benefit was also passed on by him to the eligible buyers. However, now after complete working DGAP has worked out that he was supposed to pass on Rs. 4,59,286/- which was based on the working being provided by the Respondent No. 1. Based on his working which he has submitted before DGAP, he has passed on Rs. 97,665/- to 4 customers which has been mentioned in Table ‘N’ of the DGAP’s Report. N

(d) He accepted the working made by the DGAP and would pass on the benefit and submit the proof of the same. He further requested not to impose penalty for the same.

27. The said submissions dated 25.09.2020 of the Respondent No. 2 were supplied to Applicant No. 1 and the same was also forwarded to the DGAP by the Authority for clarification under Rule 133 (2A) of the CGST Rules 2017.

28. The Applicant No.1 vide his email dated 21.10.2020 has submitted that he has not received any refund of excess GST (1 & 2 credit notes in table ‘H’),

whatever though the Respondent No. 1 may have submitted to the DGAP that he had refunded the amount, whereas he has not received anything. Further he has also submitted that he does not care about last 02 Tax Invoices (Credit) since he has not acknowledged that demand and it was prejudice. The Authority had forwarded the above email to the DGAP for clarification under Rule 133(2A) of the CGST Rules 2017.

29. The DGAP vide his letters dated 16.10.2020 and 11.11.2020 has submitted his reply to the Authority, wherein he has *inter alia* stated that:-

(a). The Respondent No. 2 vide his letter dated 25.09.2020 submitted that he had passed on the benefit of ITC to his customers and enclosed the copies of Credit Notes/Cheque vide which such benefit was passed on, which have been verified by the DGAP and found to be in order as is shown in Table 'N' of his Report dated 26.08.2020. The DGAP, for confirmation of receipt of ITC benefit had sent emails to said four buyers, in response to which, three buyers had replied and confirmed the receipt of the same and remaining one buyer Sh. Harpreet Singh having flat no. L-706 stated that he had filed a case against the Respondent No. 2 in Haryana RERA in Nov. 2018 for refund of Rs. 38.58 lakhs deposited with him for not handing over the said flat in time as per terms & conditions of the buyers agreement, which was pending, so if the Respondent had made any credit note entries for payment of Rs.1,89,160/- in his favour, he was not aware of such payment. Further the DGAP also reported that the Respondent No. 2 had submitted copies of emails through which the copies of credit notes were communicated to them.

(b). He has prepared the report dated 26.08.2020 on the basis of documents/information submitted by the Respondent No. 1, Respondent No. 2 and the Applicant No.1 during the course of investigation in terms of the provisions of the Section 171 of CGST Act 2017 and the Rules made thereunder. Further with regard to the objection raised by the Applicant No. 1 of cost raise by 7.5% and average profiteering in cases of other builders (published on the Authority's portal) as 7% approx., the DGAP has clarified that the computation of commensurate reduction in prices or profiteering is purely a mathematical exercise which is based on some of the parameters and hence it would vary from project to project and company to company as the facts of each case are 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 of inputs, rates of taxes, amount of ITC availed, total saleable area, area sold and the taxable turnover realised before and after the GST implementation would always be different than the other project and hence the amount of benefit of additional ITC to be passed on in respect of one project would not be similar to 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 are issued. Therefore, no two companies even two projects of the same company can be compared to check the ratios of profiteering which are determined by the DGAP by taking into account the particular facts of each case. The DGAP has also reported that the Applicant No.1's submission of receiving of GST benefit has already been dealt in para 24 of Report dated 26.08.2020 which reads as;

"vide e-mails dated 30.07.2020, the Applicant No.1 confirmed the receipt of two Credit Notes mentioned at S. No. 1 & 2 of above table- 'H'. However, the Applicant No. 1 was expecting to receive these benefit in their Bank Account and misunderstood with the Statement of Account enclosed by him vide e-mail dated 30.07.2020. He further stated that the remaining two amounts of Rs. 50,979/- &Rs. 2,899/- adjusted in tax invoices no. CI0150000911 & CI0150000912 respectively raised on 09.01.2019 but not appearing in statement of account. The DGAP has also submitted that the Applicant No. 1 submitted that he has not paid the Instalments raised on 09.01.2019 and filed a case in the National Consumer Disputes Redressal Commission (NCDRC) for defective possession offer. The Applicant No. 1 has also pointed out certain deficiencies in the facilities promised and provided by the Respondent No. 1."

"however on reviewing the statement of account enclosed by the Applicant No. 1 in his mail (also submitted by the Respondent No. 1 in his earlier submission dated 12.02.2020), it is observed that these both invoices i.e. CI0150000911 & CI0150000912 dated 09.01.2019 appear in the statement of account and it is specified in the invoices that GST Credit of Rs. 50,979/- &Rs. 2,899/- is given against the Charge Amount therefore, it is established from the documentary evidences that the benefit of Rs. 50,979/- &Rs. 2,899/- was duly adjusted in the aforesaid invoices CI0150000911 & CI0150000912 raised on 09.01.2019 and appearing in statement of account, although the same were not paid by the Applicant No. 1. The detailed computation and reconciliation of invoice with Statement of A/c is furnished as below:

Table-'I' (Invoice No. CI0150000911 dated 09.01.2019)

S.No.	Particular	Amount as per Agreement	Benefit of 2.25%	Net Amount
1	Basic Sale Price (BSP) (A)	20,35,736	45,804	19,89,932
2	Car Parking Charges (B)	2,30,000	5,175	2,24,825
3	Preferential Location Charges (C)	45,400	-	45,400
4	Total Charge Amount (D)=(A+B+C)	23,11,136*	50,979	22,60,157
5	CGST + SGST (E)			2,84,708
6	Total Invoice Value (F)=(D+E)			25,44,865
7	As per Statement of Account (G)			25,44,865
8	Difference (H)=(E-G)			-

Table-'J' (Invoice No. CI0150000912 dated 09.01.2019)

S.No.	Particular	Amount as per Agreement	Benefit of 2.25%	Net Amount
1	Association Formation Charges (A)	3,000	68	2,933
2	Club Membership Fee (B)	45,000	1,013	43,988
3	Electrification Charges (C)	36,320	817	35,503
4	Power Backup Charges (D)	37,500	844	36,656
5	Legal & Admin. Charges (E)	7,000	158	6,843
6	IFMS (F)	18,160	-	18,160
7	Total Charge Amount p(G)=(A+B+C+D+E+F)	1,46,980*	2,898	1,44,082
8	CGST + SGST (H)			22,666
9	Total Invoice Value (I)=(G+H)			1,66,748
10	As per Statement of Account (J)			1,66,749
11	Difference (K)=(I-J)			-1

Note: The amount has been verified from the Agreement as well immediate previous instalment (5th instalment raised on 28.01.2018) as the 5th and 6th Instalments are equal i.e. 20% each of total agreement value.

30. On receipt of above said clarifications under rule 133 (2A) of the CGST Rules 2017 from the DGAP, the same were supplied to the Respondent No. 2 and the Applicant No. 1 by the Authority directing them to submit their consolidated written submissions. However the Applicant No. 1 vide his email dated 22.12.2020 has submitted his reply reiterating his previous email dated 21.10.2020 and also stating that he had not received any refund from Respondent No. 1 whatsoever. Any Refund will be treated as made provided it was received in his hands (bank account) which was not done. When he had paid excess GST whatever was claimed by the builder against his 4th instalment against which this complaint was submitted, why any amount of refund was not given to the credit in his account? Keeping this refund amount in builders' own books tantamounted to no refund and was liable to be refunded with interest.

31. In the interest of natural justice, the Authority has granted hearing to the Respondents and Applicant No.1 through Video conferencing on 28.01.2021, vide which Applicant No.1, had reiterated his previous arguments and also stated that he never received any notification from Respondent No. 1 where any amount of

excess GST was refunded to him neither remitted to his bank account. He further stated that he could see some refund as credit to his ledger account maintained by Respondent No. 1 in his own books. He also stated that any refund full or partial should come to his bank account with interest from the date of payment of excess GST i.e. w.e.f. Jan 2018. He submitted that when DGAP found 7% anti profiteering amount in his 1st Report during investigation, how it has come that is justified in 2nd Report, as to 2.25%.

32. The Respondent No. 2 vide his letter dated 27.01.2021 has stated that he has already submitted various details vide his submissions made before the Authority/the DGAP including the details of benefit passed on by him to the customers, any further submissions would be repetition of earlier submissions. He also requested the Authority to pass an appropriate order after considering his submissions.

33. In view of the objections raised by the Applicant No. 1, during the above said hearing and vide his submissions dated 22.12.2020 and 28.01.2021, the Authority had sought clarifications from the DGAP on the points mentioned below:

- a. No refund has been received by the Applicant No. 1 from the Respondent No. 1.
- b. Applicant No. 1 has also claimed that no interest has been paid to him on the amount of ITC benefit by the Respondent No. 1.
- c. Applicant No. 1 has further claimed that the ITC benefit was computed by the DGAP as 7% vide his Report dated 27.02.2019 whereas it has been computed as 2.25% in the subsequent Report dated 26.08.2020 which raises serious doubts on the computation of the ITC benefit.
- d. It has also been observed from the Report dated 26.08.2020 of the DGAP that turnovers of the pre and post GST periods of Respondent No.1 do not match with the home buyers list. It has further been observed from the above Report that Respondent No. 1 has reversed the ITC in the month of March 2018 whereas the OC was received in the month of December 2018. Further saleable area has been taken as 3,73,153 Sq. ft. of the entire units whereas the area should have been taken till the OC was received.
- e. Based on the above, there are sufficient grounds to believe that the Respondent No. 1 is apparently required to pass on the benefit of ITC to the

Applicant No. 1 along with the interest. It is also apparent that the computation of profiteered amount made by the DGAP is not correct.

34. Apart from the points as mentioned at para 33 supra, the Respondent No. 1 was also directed vide Notice dated 05.02.2021 to explain the claims of the Applicant No. 1 made during the above said hearing and his submissions dated 22.12.2020 and 28.01.2021 as given below:

- a. No refund has been received by the Applicant No.1 on account of the ITC benefit from the Respondent No. 1.
- b. No interest has been paid to him on the ITC benefit by the Respondent No. 1.
- c. The Respondent No. 1 has not passed on any benefit of input credit to him which has burdened him with excess Tax of 7% in the GST Regime.

35. Accordingly, the Respondent No. 1 vide his letter dated 24.02.2021 has submitted his reply to the issues raised by the Applicant No. 1 (mentioned at para 33 & 34 above), stating that:-

(a). the allegations of the Applicant No.1 were completely baseless and without any evidence.

(b). on the objections raised by the Applicant No. 1 that "No refund has been received by the Applicant No.1 on the account of the ITC benefit from the Respondent No. 1",

(i) the Respondent has submitted that Section 171 of the CGST Act, 2017 provides that any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient *by way of commensurate reduction in price.*

(ii) in the instant case, the reduction in price has been made at the time of milestone billing itself by way of adjustment in the invoice. Further some benefit was passed by way of credit notes. This fact has been verified and confirmed by the DGAP at para 23 and 24 of the Report dated 26.08.2020. From the invoices, details of which are given in para 24, it is evident that demand of amount itself has been made for the net amount (after adjusting for benefit of credit). Since the demand itself is for the net amount after adjustment, there is no question of further refund of any amount to the Applicant No. 1. Similarly, credit notes (details of which have been given in para 23 of report and accepted by the

Applicant No 1) has reduced the amount payable by the Applicant No 1. Therefore, he submitted that there was no need of giving any refund to the Applicant No. 1 and thus allegation of Applicant No. 1 that the amount of benefit has not been refunded is incorrect.

(iii). he has passed on benefit of input tax credit to the extent of Rs. 1,06,323/- by way of commensurate reduction in prices in the following manner:

- Through issuance of credit note: Rs.52,445/-
- Through adjustment in tax invoice: Rs.53,878/-

(iv). the list of credit notes and tax invoices along with Statement of Account and Application Form evidencing that benefit of input tax credit has been passed on by him to the Applicant No.1 are furnished to the Authority. In fact, on perusal of the Statement of Account, it could be seen that it was the Applicant No.1 who owes money to him (the Respondent No.1) and not vice versa. The balance amount payable by the Applicant No. 1 to him as per Statement of Account was Rs. 27,50,805/-. The Applicant No. 1 owes the money to him due to various outstanding instalments billed by him as per the terms and conditions of Builder Buyer Agreement.

(v). the Applicant No. 1 asking him for refund of input tax credit is baseless, the amount of benefit has already been passed on and duly reflected in the Statement of Account as attached. There is no averment from the Applicant No. 1 to the contrary. Thus, he has requested the Authority to reject the allegations of Applicant No. 1.

(c). upon the objection "No interest has been paid to the Applicant No. 1 on the input tax credit benefit by the Respondent No. 1,

(i) he has computed and passed on the benefit of input tax credit on each milestone of installments billed to the Applicant No. 1 therefore, there has been no delay in passing on the benefit of input tax credit to the Applicant No.1. In fact, from the Statement of Account, it can be clearly seen that it is the Applicant No.1 who owes money to him and not vice versa. If at all any interest is due, it is the Applicant No.1 who is liable to pay the interest.

(ii) there is no provision under the CGST Act, 2017 which provides for payment of interest along with benefit of input tax credit.

(iii) the DGAP in his report has said that Section 171 is not invocable


against him. He also submitted that once 171 is not invocable there is no question of payment of interest to the Applicant No.1. Hence, he submitted that the allegation about non-payment of interest does not hold good. Thus, allegations of the Applicant No.1 are liable to be dropped.

(d). In respect of the allegation that "the Respondent has not passed on any benefit of input tax credit which has burdened the Applicant with excess tax of 7% in the GST regime", The Respondent No. 1 has stated that

(i). the allegation of the Applicant No. 1 is factually incorrect and is relying on the earlier Report of DGAP dated 27.02.2019 which was rejected by the Authority and order for fresh investigation was issued and during fresh investigation DGAP has found that actual benefit to the Respondent is 1.55% which has already been passed to the Applicant No. 1 and other buyers.

(ii). reliance on the DGAP report dated 27.02.2019 which is not in existence and rejected by the Authority, is not correct and for this reason itself the allegation of the Applicant No. 1 is not maintainable and deserves to be set aside.

(iii). the Applicant No. 1 has challenged the report submitted by the DGAP and DGAP will make submissions in that regard.

(iv). it is to be noted that the Applicant No. 1 is making contradictory statement, on one hand Applicant No.1 has alleged that no refund has been received for benefit of input tax credit, on the other hand he has accepted the receipt of credit note in statement of account as confirmed in the Report of the DGAP thus, this allegation of the Applicant No.1 is also completely baseless and deserves to be set aside. 

(e). The Applicant No. 1 has been creating unnecessary nuisances and making baseless allegations against him since beginning of this project. He also stated that the Applicant No. 1 has raised various disputes against him without any evidence which include collection of Service Tax by him, billing of charges by him as per Builder Buyer Agreement, TDS deduction by him, non-construction of 23 mtr road, etc. Further, the Applicant No. 1 has been making defamatory tweets against him wherein he has also issued a warning to the Applicant No. 1 for First Information Report (FIR).

(f). The investigation of this project has been done twice by the DGAP and the

allegations by the Applicant No. 1 against him and against the report of the DGAP are completely baseless.

(g). He requested the Authority;

- (i) to drop the proceedings initiated against him,
- (ii) not to invoke Section 171 of the CGST Act, 2017 against him as recommended by the DGAP in its report,
- (iii) to grant him, an opportunity of personal hearing and to file additional submissions if required before passing any final order in the present investigation and to pass any other order(s) as may be deemed just and proper in the facts of the present.

36. Further, the DGAP has also submitted his clarifications vide his Report dated 03.03.2021 wherein the DGAP has submitted that:-

(i). The turnover considered in Table 'K' of his Report dated 26.08.2020 consists of turnover as per list of home buyers of both the Respondent No. 1 as well as the Respondent No. 2, as the Respondent No. 1 has availed the entire credit for the project (including units pertaining to the Respondent No. 2 and the Respondent No. 2 is also required to pass on the benefit to its recipients. The breakup is as follows:

S.No.	Particulars	Period		Remark
		Pre-GST (01.04.16 to 30.06.17)	Post-GST (01.07.17 to 30.11.19)	
1	Turnover as per list of home buyers			
2	the Respondent No. 1 (A)	39,86,42,312	36,05,49,555	
3	the Respondent No. 2 (B)	12,67,54,014	2,64,56,562	
4	Total Turnover as per list of home buyers (C)=(A)+(B)	52,53,96,326	38,70,06,117	
5	Turnover as per Table 'K' of the Report dated 26.08.2020 (D)	52,53,96,326	38,70,06,117	Para-25 of the Report dated 26.08.2020
6	Difference (E)=(C)-(D)	-		

The DGAP has further stated that from the above Table, it can be observed that there is no difference between the turnover as per list of home buyers and the turnover considered in his Report dated 26.08.2020.

(ii). the ITC reversed in the month of March-2018 pertains to 09 towers (other than A & L). Proportionate ITC pertaining to unsold area of tower A&L was reversed in the GSTR-3B for the month of Dec. 2018 Returns only.

(iii). in the present case, it may be noted from Table 'K' of his Report dated 26.08.2020 that he has firstly computed the proportionate CENVAT/ITC on the area sold relevant to the turnover received on such area at S. No. 8 of the Table -'K' by apportioning the total ITC availed (before reversal on account of unsold units since the total saleable area considered is also without excluding the unsold units on date of receipt of OC) with the area actually sold. Thereafter, the DGAP computed the ratio of CENVAT/ITC to the turnover received by the Respondent No. 1 & Landowner from such sold area. Since, the DGAP has considered the total CENVAT/ITC availed by the Respondent No. 1 (before reversal on account of unsold units) which pertains to the total saleable area of 3,73,153 sq. ft. and later on computed relevant to turnover, therefore he has correctly considered the total saleable area of the entire units.

(iv). there are no restrictions in the CGST Act 2017 and the Rules made thereunder w.r.t. availment of proportionate inputs tax credit even after receipt of Occupancy Certificate pertaining to the units which were sold/consideration received (in part/full) prior to receipt of OC. The Respondent No. 1 has availed ITC of Rs. 22,07,377/- having date post receipt of OC i.e. after 26.12.2018 (which is approx. 5% of total ITC availed of Rs. 4,28,04,787/-). Therefore the DGAP has duly considered the ITC availed post receipt of OC while computing the ratio of CENVAT/ITC to turnover.

(v). the reference made to para 5 of Schedule-III of the Central Goods and Services Tax Act, 2017 (Activities or Transactions which shall be treated neither as a supply of goods nor a supply of services) reads as "*Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building*". Further, clause (b) of Paragraph 5 of Schedule II of the Central Goods and Services Tax Act, 2017 reads as "*(b) construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier*".

Thus, from the above, the DGAP has submitted that the sale of the units which remained unsold at the time of receipt of Completion/Occupancy Certificate (whichever is earlier), shall neither be treated as a supply of goods nor a supply of service. Therefore, the sale of unsold units after receipt of Completion/Occupancy Certificate would not fall within the ambit of GST and supplier of service cannot charge GST on such sale of units. Since, no GST is chargeable on these units, no ITC can be availed against such units. Accordingly, the ITC pertaining to the residential units which remained unsold at the time of receipt of Completion/Occupancy Certificate, is provisional ITC which is required to be reversed by the supplier in terms of section 17(2) and 17(3) of the CGST Act 2017 which read as under;

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

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

From the above, it is inferred that the units sold prior to Completion/Occupancy Certificate would continue to fall within the purview of GST and on all the demands raised by the supplier against such units after receipt of Completion/Occupancy Certificate would attract GST also. Therefore, the ITC available to the supplier can be availed by the supplier at the time of discharging his liability against such units. Further, DGAP has submitted that if the investigation was restricted upto Dec. 2018 then the customers who made payments post Dec. 2018 (i.e. after receipt of OC) and borne the applicable rate of GST @ 12% would be deprived of the benefit of ITC required to be passed on to them under the provisions of Section 171 of the CGST Act 2017. Since, each customer/flat buyer is entitled to receive the due benefit of ITC on services received from the Respondent, the investigation was extended upto Nov. 2019 to cover such customers/flat buyers also. Further, by extending the period, the DGAP has considered the additional ITC of Rs. 22,07,377/- availed by the Respondent post receipt of Occupancy Certificate. The DGAP has also stated that the Authority vide

letter dated 26.08.2020 directed to conduct further investigation upto the period of Nov. 2019 in the present case.

37. Further 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 from 29.04.2021 till 23.02.2022, and the minimum quorum was restored only w.e.f. 23.02.2022. Personal hearing was held on 28.04.2022 and was attended by the Applicant and the Respondents.

38. The Authority has carefully considered the Reports of the DGAP, submissions of the Applicant No. 1, the Respondent No. 1, the Respondent No. 2 and other material placed on record and finds that:

(i). The Applicant No. 1 vide his complaint dated 25.01.2018 had alleged that the Respondent No. 1 was not passing on the benefit of ITC to him on the purchase of flat in the "Godrej Summit" Project being executed by the Respondent in Gurugram, Haryana. This complaint was examined by the Haryana State Screening Committee on Anti-Profiteering in its meeting held on 20.06.2018 and was referred to the Standing Committee on Anti-Profiteering. This complaint was examined by the Standing Committee on Anti-Profiteering and forwarded to the DGAP for investigation, who investigated the matter and furnished his investigation Report dated 27.02.2019 to the Authority stating that the Respondent had obtained additional benefit of ITC to the extent of 7.05% of the taxable turnover which he had not passed on to his buyers and he had thus profited an amount of Rs. 1,67,24,158/- (inclusive of GST) in violation of the provisions of Section 171 of the CGST Act, 2017. However, due to the objections raised by the Respondent on the above said Report as well as the discrepancies found in the Report, the DGAP was directed to re-investigate the above complaint under Rule 133 (4) of the above Rules vide Interim Order No. 16/2019 dated 28.11.2019.

(ii). The DGAP has re-investigated the matter and submitted his Report dated 26.08.2020 wherein it was reported that the ITC as a percentage of the total turnover which was available to the Respondent No. 1 during the pre-GST period was 3.70% and during the post-GST period this ratio was 5.25%, as per the Table-K mentioned supra and therefore, the Respondent

has benefited from the additional ITC to the tune of 1.55% (5.25% - 3.70%) of the total turnover which he was required to pass on to the flat buyers of this Project. The DGAP has also found that the Respondent has not reduced the basic prices of his flats by 1.55% due to additional benefit of ITC and by charging GST at the rate of 12% on the pre-GST basic prices. Further, the DGAP has submitted that the benefit of Rs. 67,18,426/- was to be passed on by the Respondent to home buyers for the period 01.07.2017 to 30.11.2019 but as per above mentioned 'Table-M', the Respondent has claimed to have passed on the benefit of Rs. 1,17,37,843/- to 84 home buyers (details given in Annexure-23 of the Report dated 26.08.2020) and to the Respondent No. 2 in the form of Credit Notes in respect of 64 Units against his share @ 35% in the flats of towers A & L of the project, and Tax Invoices (as verified by the DGAP from the sample copies of the Credit Notes, tax invoices and undertaking provided by the Respondent).

Further, in respect of the Respondent No. 2, the DGAP has submitted that the Respondent No. 2 had acknowledged the receipt of ITC of Rs. 32,17,256/- through credit notes dated 28.04.2019 & 30.04.2019 and submitted an undertaking of the same on 12.02.2020 to the DGAP. The DGAP has also reported that, the Respondent No. 2 had further passed on an amount of Rs. 97,665/- to 4 buyers to whom demands were raised or payment received during the period 01.07.2017 to 30.11.2019. Credit Notes/Payment Vouchers of which have been verified by the DGAP, which is less, as far as such four buyers are concerned, than what the Respondent No. 2 ought to have passed on, by an amount of Rs. 3,61,621/- as per the details are given in Table-'N'.

(iii). The Authority finds that the additional benefit of ITC availed by the Respondent No.1 and 2, during the period 1st July 2017 to 30th November 2019, which was required to be passed on to their buyers, had been correctly calculated by the DGAP which was based on the factual records/information furnished by the Respondent No. 1 and 2 and according to the Methodology which had been approved by the Authority in all the cases where benefit of ITC was required to be passed on under the provisions of Section 171 of the CGST Act, 2017. The details have been clearly narrated in the Report dated 26.08.2020 of the DGAP as has been reproduced above. The calculations and details in Tables A, B, C, D, E, K and L above when read together and

in sequence give a proper narration of the interests of both Respondent No. 1 and 2 on the Project, the details of the number of units, the turnover and ITC in the pre GST and post GST periods, the number of units and area for which profiteered amount needs to be calculated for the purposes of Section 171 of the CGST Act, 2017 and the calculation thereof.

(iv). In view of the above facts, it is established that the Respondent No. 1 has benefited from the additional ITC to the extent of 1.55% of the turnover during the period from 01.07.2017 to 30.11.2019. The Respondent No.1 had not passed on the above benefit to his 84 customers (including Applicant No. 1) and Respondent No. 2. Thus, he had profiteered an amount of Rs. 67,18,426/- inclusive of GST @ 12% as is evident from the aforesaid Report dated 26.08.2020. Such amount inclusive of Rs. 80,722/- from the Applicant No. 1 and Rs. 66,37,704/- from 83 other than the Applicant No. 1 and Respondent No. 2.

(v). The Authority finds that, the claim of the Respondent No.1 that he had passed on the benefit of Rs. 67,18,426/- to 84 home buyers and the Respondent No. 2 has been verified by the DGAP. As per details of such verification as tabulated in Tables M above, the DGAP has reported that, the Respondent No. 1 has passed on the benefit on account of additional ITC to all the 84 homebuyers as well as Respondent No. 2 through credit notes and on tax invoices. N

(vi). The Authority finds that, the DGAP has investigated profiteering by the Respondent No. 2 in the latter's role as registered supplier and his liability to pass on the benefit of ITC in terms of Section 171 of the CGST Act, 2017. The DGAP has reported, on verification, as detailed at Table N above that, the amount profiteered by Respondent No. 2 is Rs. 4,59,286/- in relation to the four units for which demands were raised/advance received during 01.07.2017 to 30.11.2019. On verification, the DGAP has reported that, Respondent No. 2 had passed on benefit amounting to Rs. 97,665/- to such homebuyers by way of credit notes and an amount of Rs. 3,61,621 was not yet passed on till the date of report.

(vii). The Authority finds that, the Applicant No. 1 has claimed that he had neither received any refund of excess GST nor received interest on the amount of ITC benefit from the Respondent No. 1. In reply, the Respondent No. 1 had submitted that he had passed on the benefit of ITC to the extent of

Rs. 1,06,323/- in the form of two Credit Notes of Rs. 52,445/- and two Tax Invoices of Rs. 53,878/-. The Authority finds that, DGAP has clarified that, the Applicant No. 1 had confirmed the receipt of two Credit Notes dated 20.02.2018 and 21.06.2018 for Rs. 23,309/- and Rs. 29,136/- respectively and the DGAP has established from the documentary evidences that the benefit of Rs. 50,979/- and Rs. 2,899/- was duly adjusted in two invoices dated 09.01.2019 raised by the Respondent No. 1 to the Applicant No. 1. Since, the Applicant No. 1 had acknowledged the receipts of amount of Rs. 52,445/- and Rs. 53,878/- through two Credit Notes and two Tax Invoices respectively from the Respondent No. 1, on such basis the DGAP has verified the passing on of ITC benefit by the Respondent No. 1 to the Applicant no. 1. The details thereof have been elaborated at Tables H, I and J above. Hence, the claim of the Applicant No. 1 that the benefit of ITC has not been passed on to him is not tenable.

(viii) The Respondent No. 1 has contended that the CGST Act read with the Rules does not provide the procedure and mechanism of determination and calculation of profiteering. In absence of such calculation and methodology the proceedings are arbitrary and are in violation of principle of natural justice. The Authority finds that, the 'Procedure and Methodology' for passing on the benefits of reduction in the rate of tax and ITC has been outlined in Section 171 (1) of the CGST Act, 2017 itself which provides that *"Any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices."*

It is clear from the plain reading of the above provision that it mentions "reduction in the rate of tax or benefit of ITC" which means that if any reduction in the rate of tax is ordered by the Central or the State Governments or a registered supplier avails benefit of additional ITC as a result of coming in to force of the GST the same have to be passed on by him to his recipients since both the above benefits are being given by the above Governments out of their tax revenue.

Further the computation of the profited amount is an easy mathematical exercise which can be done by any person who has elementary knowledge of accounts. However, to further explain the legislative intent behind the above

provision, the Authority has been authorised to determine the 'Procedure and Methodology' which has been done by it vide its Notification dated 28.03.2018 under Rule 126 of the CGST Rules, 2017 in consonance with the provisions made under Section 171 (1) of the CGST Act 2017, which is very clear in its intent.

Therefore, in view of the above, the contention of the Respondent is not sustainable.

(ix). The Respondent No. 1 has contended that the investigation could not go beyond the application filed by Applicant No.1. In this regard, the Authority finds that, Section 171(1) of the CGST Act, 2017 which reads as "*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 the *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, it justifies examination of all the supply made by the Respondent No. 1 and the Respondent No. 2 beyond the application filed by the Applicant No. 1.

Further, the case relied upon by the Respondent No. 1 in respect of *M/s. U.P. Sales & Services vs. M/s. Vrandavaneshwree Automotive Private Limited 2018-VIL-01-NAA* is not relevant in this case. In that case, the Applicant No. 1 was entitled to the benefit of ITC on the Honda Car having Model No. WR-V 1.2 VX MT (I-VTEC) which had already been passed on by the above company. Hence, there was no ground to investigate the other models of the Cars. However, in the present case it was found that the Respondent No. 1 had not passed on the benefit to the Applicant No. 1 and hence there was sufficient ground for the DGAP to investigate the passing on the benefit to other flat buyers also.

Similarly, the Respondent No. 1 has also quoted the case of *Shri Rishi Gupta vs. M/s Flipkart Internet Pvt. Ltd. 2018 VIL-04-NAA*. In that case, there was no ground to investigate other products of the Respondent as he was not a supplier however, during the course of proceedings it was found

that M/s. Flipkart had not refunded the extra GST to the buyers which was ordered to be refunded and it was accordingly refunded. Therefore, the above case did not help the cause of the Respondent No. 1.

(x). The Respondent has contended that the application filed by the Applicant No. 1 should be compared a Show Cause Notice for tax proceedings and hence the DGAP could not travel beyond the Show Cause Notice. In this regard, it would be relevant to mention that the application filed by the Applicant No.1 cannot be compared to a Show Cause Notice for tax proceedings because claim of benefit of ITC does not amount to payment of tax. The amount which has been profiteered by the Respondent from the Applicant No.1 also does not amount to tax as no tax has been imposed under section 171 of the CGST Act 2017 as such a tax can be imposed under section 9 of the CGST Act 2017. Therefore the law settled in the cases of *Toyo Engineering India Limited vs. Chief Commissioner, Mumbai 2006 (201) E.L.T. 513 (S.C.)* and *Reckitt & Colman of India Ltd. vs. Chief Commissioner of Excise 1996 (88) E.L.T. 641 (S.C.)*, does not apply in the facts of the instant case. Accordingly, the above contention of the Respondent is incorrect and not tenable.

(xi). The Authority finds that, vide Section 112 of the Finance Act, 2019 specific penalty provisions have been added for violation of the provisions of Section 171 (1) which have come in to force w.e.f. 01.01.2020, by inserting Section 171 (3A). Since, no penalty provisions were in existence between the period from 01.07.2017 to 30.11.2019 i.e. the period of investigation, when the Respondent had violated the provisions of Section 171 (1), the penalty prescribed under Section 171 (3A) cannot be imposed on the Respondent retrospectively for such period.

39. As per the findings at paragraph 38 supra, the Authority determines the amount profiteered by the Respondent No. 1, during the period 1.07.2017 to 30.12.2019, as Rs. 67,18,426/- and the Respondent No. 2 as Rs. 4,59,286/-. The Authority takes cognisance, based on the DGAP's verification, that the Respondent No. 1 has passed on benefit as per Table M above by credit notes/ on tax invoices of the amount profiteered by him. The Authority takes cognizance, based on the DGAP's verification, that the Respondent No. 2 has passed on benefit as per Table-N above by credit notes of the amount profiteered by him. The Authority directs the

Respondent No. 2 to pass on the benefit of Rs. 3,61,621/- along with interest as prescribed under Rule 133(3)(b) of the CGST Rules, 2017. The details of the homebuyers to whom the profiteered amount was required to be passed on by the Respondent No. 1 and Respondent No. 2 along with the details of such amounts claimed to be passed on by the said Respondents (and so verified by the DGAP) is attached herewith as **Annexure A** to this order. The details of the four homebuyers to whom profiteered amount is required to be passed on by the Respondent No. 2 along with details of such amounts (as reported by the DGAP) are attached herewith as **Annexure B** to this order.

40. The Authority finds that, the Applicant No. 1 has made a claim to interest on the amount of benefit of ITC accruing to him. It is his submission that, any return of benefit, by whatever means, must be along with interest due. The Authority finds that, as per the provision of Section 171 of the CGST Act, 2017 and Rule 133 of the CGST Rules, 2017, it is incumbent on the registered supplier to commensurately reduce the price of his supply to the recipient as soon as there is a reduction in the rate of tax or availability of ITC. Hence, in the present case too, it was incumbent on the Respondents to have complied with such mandate of the law. In case of non-compliance, there would be contravention of the provisions of Section 171(1) of the CGST Act, 2017. Hence, The Authority directs that, Respondent No. 1 and Respondent No. 2 shall comply with the said provisions and mandate of law. The Authority directs that Respondent No. 1 and Respondent no. 2 shall pay interest @ 18% per annum on the additional amounts collected from each recipient of supply, from the date such amounts were collected by them upto the actual date of passing on/ return of such amount to each recipient as prescribed by Rule 133(3)(b) of the CGST Rues, 2017. 8

The Authority directs the Respondent No. 1 and Respondent No. 2 to comply with these directions within a period of three months from the date of this Order. If such directions are not complied with, such sums shall be collected as per the provisions of the CGST Act, 2017.

41. The Authority as per Rule 136 of the CGST Rules 2017 directs the Commissioners of CGST/SGST Haryana to monitor compliance of this order under the supervision of the DGAP and ensure that the amount profiteered along with interest, as applicable, is passed on to all the eligible buyers by the Respondent No. 1 and 2 as ordered by the Authority. In this regard an

advertisement of appropriate size to be visible to the public may also be published in minimum of two local Newspapers/vernacular press in Hindi/English/local language with the details i.e. Name of Builder/Supplier- M/s Godrej Project Development Pvt. Ltd./ M/s Magic Info Solutions Pvt. Ltd. , Project- "Godrej Summit", Location- Gurugram, Haryana and amount of profiteering i.e. Rs.67,18,426/- and Rs.4,59,286/- so that the concerned homebuyers can claim the benefit of ITC/interest, if not passed on. Homebuyers may also be informed that the detailed NAA Order is available on Authority's website www.naa.gov.in. Contact details of concerned Jurisdictional CGST/SGST Commissioner may also be advertised through the said advertisement. The contact details of concerned jurisdictional CGST/SGST Commissioner may also be advertised through the said advertisement. A report in compliance of this order shall be submitted to the Authority and the DGAP by the Commissioners CGST /SGST within a period of 4 months from the date of this order.

42. In view of prevailing Covid pandemic, the Hon'ble Supreme Court had by its Order dated 10.01.2022 passed in M. A. no. 21/2022 in M.A. no. 665/2021 in Suo Moto Writ Petition (C) No. 3 of 2020 directed as under:-

"(i). 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.

(ii). Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022.

(iii). In case where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event, the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.

(iv). It is further clarified that the period from 15.03.2020 till 28.02.2022 shall stand excluded in computing the period under Section 23(4) and 29A of the Arbitration and Conciliation Act 1996, Section 12A of the Commercial Courts Act 2015 and provisos (b) and (c) of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period (s) of limitation for instituting proceedings over limits (within which the court or tribunal can condone delay) and termination of proceedings "

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

43. A copy each of this Order be supplied, free of cost, to the Applicant No. 1, the DGAP, the Respondent No. 1 & 2, the Secretary (Town and Country Planning) Govt. of Haryana and Haryana RERA for necessary action. File be consigned after completion.

Enclosures:-Annexure A in Pages 1 to 2 and Annexure B in Page 1.

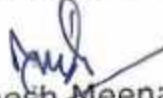
Sd-
(Amand Shah)
Technical Member &
Chairman



Sd-
(Pranod Kumar Singh)
Technical Member

Sd-
(Hitesh Shah)
Technical Member

Certified copy


(Dinesh Meena)
Secretary, NAA

File No. 22011/NAA/199/Godrej/2020 | 7549 - 7558 Date:-19.07.2022

Copy to:-

1. M/s Godrej Projects Development Pvt. Ltd., Plot No. 35, 3rd Floor, UM House, Sector-44, Gurugram, Haryana-122006.
2. M/s Magic Info Solution Pvt. Ltd, D-13, Defence Colony, New Delhi-110024.
3. Smt. Sunita Malhotra & Vijay Malhotra, House No. 223, Sector-11D, Faridabad.
4. Director General of Anti profiteering, Central Board of Indirect Taxes & Customs, 2nd Floor, Bhai Vir Singh Sahitya Sadn, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.
5. The Chief Commissioner of Central Goods and Services Tax Panchkula, Ist Floor, GST Bhavan, Sector-25, Panchkula-134112.
6. Commissioner of Commercial taxes, Vanijya Bhavan, Plot No. 1-3, Sector-5, Panchkula-134151.
7. Haryana Real Estate Regulatory Authority, Mini Secretariat, New Office Block, 2nd & 3rd Floor, Sector-1, Panchkula-134114.
8. Secretary, Directorate of Town & Country Planning, Haryana SCO-71-75, 2nd Floor, Sector-17-C, Chandigarh.
9. NAA Website.
10. Guard file.

ANNEXURE-A						
S.No	Name of Customer	Amount collected during 01.07.2017 to 30.11.2019	GST @ 12% on amount collected	Actual Amount Paid	Benefit @ 1.55% was required to be passed on	Benefit @ 1.55% has been passed on
A	B	C	D=C*12%	E=C+D	F=E*1.55%	G
1	Prashant Kumar Choudhary	5,234,734	628,168	5,862,902.08	90,875	90,874.98
3	Anil Kumar Sahay	4,548,296	545,794	5,094,080	78,958	78,958.24
5	Rohit Jain	18,577,182	2,229,262	20,806,444	322,500	322,499.88
6	Raghar Kaurish	14,858,857	1,783,063	16,641,920	257,850	257,848.76
7	Sanir Bhargava	10,797,962	1,295,755	12,093,717	187,453	187,452.62
8	Poojima Sharma	9,395,890	1,127,507	10,523,397	163,113	163,112.65
9	Amit Priyadarshi	10,105,042	1,212,605	11,317,647	175,424	175,423.52
10	Pioneer Vision Pvt Ltd	9,395,890	1,127,507	10,523,397	163,113	163,112.65
11	Mr. Sandeep Kauria	10,243,762	1,229,251	11,473,013	177,832	177,831.71
12	Mr. Dinesh Goyal	4,644,102	557,292	5,201,394	80,622	80,621.61
13	Mr. Rupan Kumar Bhattacharjee	4,559,112	547,093	5,106,205	78,146	78,146.18
14	Mr. Harsh Pandey	4,518,434	542,212	5,060,646	78,440	78,440.01
15	Mr. Badri Singh Bhandari	4,559,112	547,093	5,106,205	78,146	78,146.18
16	Mr. Ram Kishan Gupta	4,559,112	547,093	5,106,205	78,146	78,146.18
17	Mr. Brij Lal Kaul	4,559,112	547,093	5,106,205	78,146	78,146.18
18	Sanita Mathotra	4,649,912	557,989	5,207,901	80,723	80,722.47
19	Neeraj Dhanwani	4,792,744	575,129	5,367,873	82,192	82,191.91
20	Sanjay Singh	14,164,806	1,699,777	15,864,583	245,901	245,901.03
21	Mr. Ravishu Sanghi	10,105,041	1,212,605	11,317,646	175,424	175,423.51
22	Mrs. Pramodini Varma	11,369,918	1,364,389	12,734,307	197,387	197,386.64
24	Mr. Naval Kishore Arora	8,226,306	987,157	9,213,463	142,705	142,704.51
25	Karthik Shukla	8,500,819	1,020,098	9,520,917	147,574	147,574.22
26	Rajni Agarwal	8,671,869	1,040,624	9,712,493	150,538	150,537.76
27	Sanjeev Kumar Gupta	8,590,556	1,030,867	9,621,423	149,132	149,131.96
28	Ankit Tyagi	11,171,783	1,340,615	12,512,398	193,941	193,940.80
29	Vidhan Singh	12,881,762	1,545,811	14,427,573	223,627	223,627.39
30	Om Prakash Singh	1,048,841	125,861	1,174,702	18,208	18,207.88
31	Vinay Kumar Mathan	11,806,680	1,416,802	13,223,482	204,684	204,683.96
32	Akhilesh Sinha	10,359,920	1,243,190	11,603,110	179,848	179,848.21
33	Mayank Srivastava	10,359,920	1,243,190	11,603,110	179,848	179,848.21
35	Maysala -	3,231,599	387,792	3,619,391	56,101	56,100.54
36	Yugesh Khanna	14,106,680	1,692,802	15,799,482	244,892	244,891.96
37	Girija Kumar Jeshi	1,535,633	184,276	1,719,909	26,659	26,658.59
38	Vinay Krishan Sharda	1,535,633	184,276	1,719,909	26,659	26,658.59
39	Ravi Kumar Gupta	1,326,481	160,378	1,486,859	23,201	23,201.31
40	Rishi Singh	1,446,243	173,549	1,619,792	25,187	25,186.78
42	Ajay Bhatn	1,933,485	232,018	2,165,503	33,565	33,565.30
43	Piyush Agrawal	1,798,510	215,821	2,014,331	30,821	30,820.82
44	Bhavani Jha	1,893,515	227,222	2,120,737	32,871	32,871.42
45	Jai Mala Shukla	1,522,870	182,744	1,705,614	26,437	26,437.16
46	Soumya Datta	1,298,510	155,821	1,454,331	22,559	22,559.49
47	Jaya Tapadar	1,331,869	159,824	1,491,693	23,121	23,121.24
48	Nisha Gupta	1,495,638	179,477	1,675,115	25,964	25,964.28
49	Sudhanshu Khanna	1,495,638	179,477	1,675,115	25,964	25,964.28
50	Amaraj Sharma	1,393,553	167,226	1,560,779	24,170	24,170.08
51	Vivian Securities India Pvt Ltd	1,682,493	201,899	1,884,392	29,208	29,208.08
52	Nishant Kumar Jha	1,682,493	201,899	1,884,392	29,208	29,208.08
53	Suman Bahubli	1,167,873	140,145	1,308,018	20,274	20,274.28
54	Shruti Bhatn	1,336,481	160,378	1,496,859	23,201	23,201.31
55	Praveen Y. Sharma	1,336,481	160,378	1,496,859	23,201	23,201.31
56	Shikha Bhatn	1,336,481	160,378	1,496,859	23,201	23,201.31
57	Rajesh Khanna Khanna	1,301,409	156,169	1,457,578	22,592	22,592.46
58	Radhini Tripathi	1,413,918	169,670	1,583,588	24,546	24,546.62
59	Sanjeev Kumar Aery	1,477,478	177,297	1,654,775	25,449	25,449.03
60	Rohit Dogra	1,299,518	155,941	1,455,459	22,559	22,559.49
61	Rohit Gupta	2,997,321	359,678	3,357,000	51,045	51,044.73

ANNEXURE-A						
S.No.	Name of Customer	Amount collected during 01.07.2017 to 30.11.2019	GST @ 12% on amount collected	Actual Amount Paid	Benefit @ 1.55% was required to be passed on	Benefit @ 1.55% has been passed on
62	Ritesh Patil	1,281,350	153,762	1,435,112	22,244	22,244.24
63	Dinkar Jha	3,580,127	429,615	4,009,742	62,151	62,151.01
64	Surell Gupta	1,298,510	155,941	1,454,451	22,559	22,559.49
65	Lalit Khanna	1,477,478	177,297	1,654,775	25,649	25,649.02
66	Vinay Sharma	1,413,918	169,679	1,583,589	24,546	24,545.62
67	Vishal Mahindra	1,254,110	150,493	1,404,603	21,771	21,771.35
68	Ashwani Kumar Grover	1,477,478	177,297	1,654,775	25,649	25,649.02
69	Nishi Bansal	1,491,098	178,932	1,670,030	25,885	25,885.48
70	Rudip Kumar Malwa	3,073,503	368,820	3,442,323	53,128	53,128.00
71	Arvind Joshi	1,931,465	231,819	2,163,283	33,565	33,565.30
72	Amit Choudhary	1,869,181	224,302	2,093,483	32,449	32,449.98
73	Rakesh Bhatia	1,378,449	165,414	1,543,863	23,930	23,929.87
74	Zakid Ahmed	1,413,918	169,679	1,583,589	24,546	24,545.62
75	Papa Shukla	1,299,510	155,941	1,455,451	22,559	22,559.50
76	Dilip Kumar	1,393,758	167,491	1,561,249	24,230	24,230.36
77	Rakesh Gugnani	1,299,510	155,941	1,455,451	22,559	22,559.49
78	Satyajit Prakash	1,276,810	153,217	1,430,027	22,165	22,165.42
79	Hemendra Prakash	1,280,442	153,653	1,434,095	22,228	22,228.47
80	Vinod Kumar Shah	2,220,491	266,459	2,486,950	38,548	38,547.72
81	Ashu Gopal Soren Gupta	1,085,891	130,307	1,216,198	19,211	19,211.07
82	Shabir Gupta	1,720,420	206,454	1,926,874	29,867	29,867.61
83	Anuj Kumar	1,294,970	155,396	1,450,367	22,481	22,480.49
84	Ankush Verma	1,887,005	226,441	2,113,446	32,758	32,758.41
85	Dharmendra Joshi	1,929,753	231,570	2,161,323	33,581	33,580.50
86	Rakesh Alloria	1,393,758	167,491	1,561,249	24,230	24,230.36
87	Suddeep Kumar Sharma	1,299,510	155,941	1,455,451	22,559	22,559.49
88	Nishal Pari	2,928,170	351,380	3,279,550	50,833	50,833.03
89	Vaibhav Bhargava	1,299,510	155,941	1,455,451	22,559	22,559.49
	Grand Total	360,549,555	43,265,947	403,815,501	6,259,140	6,259,140

M/s Magic Info Solutions Pvt. Ltd.

ANNEXURE-B							
S.No	Name of Customer	Amount collected during 01.07.2017 to 30.11.2019	GST @ 12% on amount collected	Total amount collected	Benefit of ITC was to be passed on @ 1.55%	Benefit of ITC has been passed on @ 1.65%	Benefit of ITC is to be passed on @ 1.55%
A	B	E	F=E*12%	G=E+F	H=G*1.55%	I	J=H-I
1	Dimension Hotels & Resorts Pvt. Ltd	7,527,696	903,324	8,431,019.52	130,681	3,032	127,649
2	Birka Chaudhan	675,710	81,085	756,795	11,730	5,587	6,143
3	Suresh Vyas/Raju Vyas	7,356,856	882,823	8,239,679	127,715	2,959	124,756
4	Harpreet Singh	10,896,300	1,307,556	12,203,856	189,160	86,087	103,073
	Grand Total	432,428,621	46,440,734	433,446,851	459,286	97,665	361,621

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