

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

Case No.	44/2022
Date of Institution	02.06.2020
Date of Order	25.07.2022

In the matter of:

1. Ms. Vinutha Prahlad, 61/22, 5th Cross N. R. Colony, Bengaluru, Karnataka-560019.
2. Director General of Anti-Profitteering, Central Board of Indirect Taxes & Customs, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.

Applicants

Versus

M/s MJR Builders Pvt. Ltd., 54, 2nd Floor, 17th Cross, 12th Main, Sector-6,
HSR Layout, Bengaluru-560102.

Respondent

Quorum:-

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



Present:-

1. None for the Applicant No. 1.
2. Sh. Raminder Singh, Assistant Commissioner for the DGAP
3. Sh. Rajesh Kumar T. R. and Sh. G. Pattabhi, Chartered Accountants,
Authorised Representatives for the Respondent.

ORDER

1. The Report dated 01.06.2020, has been received on 02.06.2020 from
Applicant No. 2 i.e. the Director General of Anti-Profitteering (DGAP) after

a detailed investigation under Rule 129 (6) of the Central Goods & Service Tax (CGST) Rules, 2017.

2. The brief facts of the case and findings of investigation conducted by the DGAP are as under:-

- i. An application was received on 09.10.2019 from the Standing Committee on Anti-profiteering under Rule 129 of the CGST Rules, 2017 to conduct a detailed investigation in respect of an application dated 25.07.2019, filed by the Applicant No. 1 under Rule 128 of the Rules, alleging profiteering in respect of construction service supplied by the Respondent. The Applicant No. 1 had submitted that she had booked a Flat No. C-701 in the Respondent's project "**MJR Clique Hydra**", Electronic City Phase-I, Bengaluru and had alleged that the Respondent had not passed on the benefit of Input Tax Credit (ITC) to her by way of commensurate reduction in price. The DGAP has intimated that the Applicant No. 1 had lodged the complaint with the Karnataka State Screening Committee. Thereafter, the above reference was examined by the Standing Committee on Anti-profiteering, in its meeting held on 13.09.2019 whereby it decided to forward the same to the DGAP to conduct a detailed investigation in the matter.
- ii. The Applicant No. 1 had submitted the following documents along with her application:-
 - (a) Scanned copy of proof of Identity.
 - (b) Sale Agreement.
 - (c) Construction Agreement.
 - (d) Break up of cost as given by the Respondent.
 - (e) Demand notes from level foundation to 14th floor, internal plastering and final notes on possession.
 - (f) Payment Schedule given at the time of booking (pre-GST).
 - (g) Payment schedule with the comparison for pre and post GST.
 - (h) Copy of Anti Profiteering Application Form (APAF-1).
- iii. The Applicant No. 1 had booked Flat No. C-701 in the Respondent's project "**MJR Clique Hydra**", on 09.06.2014, i.e. in the pre-GST era in terms of the Sale Agreement agreed upon. The DGAP, on going through the Payment Scheduled (mentioned in Table-A given below), has observed that the Applicant No. 1 was to pay the consideration in 20 instalments each linked with different stages.

- iv. The Respondent had demanded 95% of the amount payable before the introduction of GST and remaining 5% amount payable was towards registration which was demanded during August, 2018. The Applicant No. 1 had submitted that prior to GST, she had already paid 10 instalments and stopped the payments from 11th instalment (seventh floor slab) as the construction after seventh floor had not progressed. However, the Applicant No. 1 started making payment after 19 instalments (Internal Plastering) and made payment of an amount of Rs. 17,41,620/- from July, 2017 to August, 2018 which was approximately 32% of the total amount payable.
- v. On scrutiny of the above application of the Applicant No. 1, the DGAP issued a Notice under Rule 129 of the CGST Rules, 2017 on 23.10.2019, calling upon the Respondent to reply as to whether he admitted that the benefit of ITC had not been passed on to the Applicant No. 1 by way of commensurate reduction in price and if so, to suo moto determine the quantum thereof and indicate the same in his reply to the Notice as well as furnish all supporting documents. The DGAP further afforded an opportunity to the Respondent to inspect the non-confidential evidences/information submitted by the Applicant No. 1 during the period 30.10.2019 to 31.10.2019 which was not availed by the Respondent. The DGAP has stated that the time limit to complete the investigation was extended up to 07.07.2020 from 08.04.2020 by this Authority, in terms of Rule 129 (6) of the CGST Rules, 2017. The DGAP has also informed that the period covered by the current investigation was from 01.07.2017 to 30.09.2019.
- vi. The Respondent, in response to the above Notice dated 23.10.2019 and subsequent reminders dated 06.11.2019, 22.11.2019, 15.01.2020, 13.02.2020 and 08.05.2020, had submitted the following documents/information vide his letters/e-mails dated 02.12.2019, 05.12.2019, 16.01.2020, 14.02.2019, 26.02.2019, 16.05.2020 and 23.05.2020:-
- (a) Copies of GSTR-1 returns for the period July, 2017 to September, 2019.
 - (b) Copies of GSTR-3B returns for the period July, 2017 to September, 2019.
 - (c) Copies of Tran-1 filed.

- (d) Electronic Credit Ledger for the period July, 2017 to September, 2019.
- (e) Copies of VAT& ST-3 returns for the period April, 2016 to June, 2017.
- (f) Copies of all demand letters, sale agreement/contract issued in the name of the Applicants.
- (g) Details of applicable tax rates, pre-GST and post-GST.
- (h) Copy of Balance Sheet and Cost Audit Report for F.Y. 2016-17, and 2017-18.
- (i) Details of VAT, Service Tax, ITC of VAT, Cenvat Credit for the period April, 2016 to June, 2017, Output GST and ITC for the period July, 2017 to June, 2019 for the Project "MJR Clique Hydra".
- (j) Cenvat/Input Tax Credit Ledger for the F.Y. 2016-17, 2017-18 and 2018-19 reconciled with VAT, ST-3 and GSTR-3B returns.
- (k) List of home-buyers for the above Project.
- (l) Project details submitted to RERA.
- (m) Copy of Completion Certificate (CC) dated 17.12.2018 of the project "MJR Clique Hydra"

The DGAP has also informed that the Respondent has not claimed confidentiality of any of the details/information furnished by him, in terms of Rule 130 of the CGST Rules, 2017. Similarly, the Applicant No. 1 was also afforded an opportunity to inspect the non-confidential documents/reply furnished by the Respondent on 28.05.2020 to 29.05.2020 which the Applicant No. 1 did not avail of.

- vii. The DGAP has examined the above application, the replies of the Respondent and the documents/evidence on record. The main issues for determination were whether there was the benefit of reduction in the rate of tax or ITC on the supply of construction service after the implementation of GST w.e.f. 01.07.2017 and if so, whether such benefit had been passed on by the Respondent to his recipients by way of commensurate reduction in prices, in terms of Section 171 of the CGST Act, 2017.
- viii. The details of Payment Schedule of Flat No. C-701 of the project "MJR Clique Hydra" as per the copy of Sale Agreement in Table- 'A' given below:-

Table-'A' (Amount in Rs.)

Payment Schedule	
MJR CLIQUE PROJECT - ELECTRONICS CITY - PHASE I	
Type Of Apartment	2 BHK (Hydra)
Seventh Floor	Flat No. C701

Apartment Area		1170
Rate Per Square feet		3480
Basic Amount		4071600
Covered Car Parking (1 No.)		250000
TOTAL CONSIDERATION (EXCLUDING VAT & ST)- TOTAL (A)		4321600
VAT Calculation		
VAT @ 14.5%	- CGST @ 9%	254359
Service Tax @ 12.36%	- SGST @ 9%	123897
Total (A)		46,99,856
S.No.	PAYMENT SCHEDULE	
1	On Booking	300000
2	On Agreement (Less Booking Amount)	20% 639971
3	On Completion of Foundation	10% 469986
4	On Completion of Ground Floor Slab	4% 187994
5	On Completion of First Slab Floor	4% 187994
6	On Completion of Second Slab Floor	4% 187994
7	On Completion of Third Slab Floor	4% 187994
8	On Completion of Fourth Slab Floor	4% 187994
9	On Completion of Fifth Slab Floor	4% 187994
10	On Completion of Sixth Slab Floor	4% 187994
11	On Completion of Seventh Slab Floor	4% 187994
12	On Completion of Eighth Slab Floor	4% 187994
13	On Completion of Ninth Slab Floor	4% 187994
14	On Completion of Tenth Slab Floor	4% 187994
15	On Completion of Eleventh Slab Floor	4% 187994
16	On Completion of Twelfth Slab Floor	4% 187994
17	On Completion of Thirteenth Slab Floor	4% 187994
18	On Completion of Fourteen Slab Floor	4% 187994
19	On Completion of Internal Plastering	5% 234993
20	On Registration	5% 234993
	TOTAL (A)	100% 46,99,853
	OTHER CHARGES (Approx.)	
1	**Registration and stamp Duty	109303
2	*BWSSB and BESCOM charges and deposits	204750
3	Maintenance fee	84240
4	Service tax on Maintenance fee	10412
5	Professional charges	30000
6	Club charges	150000
	TOTAL (B)	588705
	GRAND TOTAL (A+B)	52,88,558

- ix. Para 5 of Schedule-III of the CGST Act, 2017 (Activities or Transactions which should be treated neither as a supply of goods nor a supply of services) reads as "Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building". Further, clause (b) of Paragraph 5 of Schedule II of the CGST Act, 2017 read 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 the completion certificate, where required, by the competent authority or after its first occupation, whichever was earlier". Thus, the ITC pertaining to the residential units which were under construction but not sold was provisional ITC which might be required to be reversed by the Respondent, if such units remained unsold at the time of issue of the Completion Certificate (CC), in terms of Section 17(2) & Section 17(3) of the CGST Act, 2017. Therefore, the ITC pertaining to the unsold units might not fall within the ambit of this investigation, and the Respondent was required to recalibrate the selling prices of such units to be sold to the prospective buyers by considering the proportionate benefit of additional ITC available to him post-GST.

- x. The present case pertained to supply of construction service and the investigation was limited to one project i.e. "MJR Clique Hydra" only, in which the Applicant No. 1 had booked his Unit No. C-701. However, the Respondent vide his submission dated 03.12.2019 has submitted that he had executed other three projects namely MJR Platina, MJR Pearl and MJR Clique Hercules and all these projects were executed in Bangalore only.
- xi. Prior to 01.07.2017, i.e., before GST was introduced, the Respondent was eligible to avail CENVAT credit of Service Tax paid on the input services. However, CENVAT credit of Central Excise Duty paid on the inputs was not admissible as per the CENVAT Credit Rules, 2004, which was in force at the material time. Further, on going through the VAT Returns submitted by the Respondent he was paying VAT under Karnataka VAT under normal scheme and was eligible to avail ITC of VAT paid on the inputs purchased by him. The Respondent had submitted VAT Returns and the breakup of the purchases made for the above project to justify the credit of VAT for the above project and details of VAT turnover for the project were provided.
- xii. The DGAP has further mentioned that prior to 01.07.2017, deduction from turnover of the payments made to the registered contractors and sub-contractors (from the taxable turnover under VAT) on which VAT @ 4% was being levied. Further, post-GST, the Respondent could avail the

ITC of GST paid on all the inputs and input services including the sub-contracts. The DGAP has also observed from the information submitted by the Respondent for the period April, 2016 to September, 2019, the details of the input tax credits availed by him, his total turnovers from the project "MJR Clique Hydra", the ratios of ITCs to the turnovers during the pre-GST (April, 2016 to June, 2017) and post-GST (July, 2017 to September, 2019) periods, have been furnished in Table-'B' given below:-

Table 'B' (Amount in Rs.)

S.No.	Particulars	(Pre-GST)	(Post-GST)
1	Credit of Service Tax Paid on Input Services (A)	70,59,822	
2	Input Tax Credit of VAT paid on Inputs (B)	1,07,27,831	
3	Total CENVAT/VAT/Input Tax Credit Available (C=A+B)	1,77,87,653	
4	Input Tax Credit of GST Availed (D)		3,81,52,051
5	Total Turnover from Residential Area (E)	24,55,62,128	27,98,05,928
6	Total Saleable Area (F)	3,45,690	3,45,690
7	Sold Area relevant to Turnover in Sq. Ft. (G)	1,77,000	2,22,040
8	ITC proportionate to Sold Area (H= (C or D)* G/F)	91,07,624	2,45,05,428
9	Ratio of Cenvat/Input Tax Credit to Turnover (I=H/E*100)	3.71%	8.76%

- xiii. The DGAP has claimed from the above Table- 'B' that the input tax credit as a percentage of the turnover that was available to the Respondent during the pre-GST period (April, 2016 to June, 2017) was 3.71% and during the post-GST period (July, 2017 to September, 2019), it was 8.76% which clearly confirmed that post-GST, the Respondent had benefited from additional ITC to the tune of 5.05% [8.76% (-) 3.71%] of the turnover.
- xiv. The Central Government, on the recommendation of the GST Council, had levied 18% GST (effective rate was 12% in view of 1/3rd abatement on land value) on construction service, vide Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017. Accordingly, the profiteering had been examined by comparing the applicable tax rate and ITC available for the pre-GST period (April, 2016 to June, 2017) when Service Tax @

5.8% or 6% and VAT @ 10.15% were payable (total tax rate of 15.95% or 16.15% of the construction value) with the post-GST period (July, 2017 to September, 2019) when the GST rate was 12% on construction service. The DGAP on the basis of the figures contained in Table- 'B' above, the comparative figures of the ratio of ITCs availed/available to the turnover in the pre and post GST periods, has tabulated the recalibrated base price and the excess collection (profiteering) during the post-GST period, in Table-'C' given below:-

Table 'C'

Amt. in Rs.

S. No.	Particulars		Pre-GST	Post- GST
1	Period	A	April, 2016 to June, 2017	July, 2017 to September, 2019
2	Output tax rate (%)	B	6.00%	12.00%
3	Ratio of CENVAT/VAT/GST Input Tax Credit to Total Turnover as per Table - B above (%)	C	3.71%	8.76%
4	Increase in input tax credit availed post-GST (%)	D	-	5.05%
5	<u>Analysis of Increase in input tax credit:</u>			
6	Total Basic Demand during July, 2017 to September, 2019	E		27,98,05,928
7	Less the Basic demand booked after 17.12.2018 (post CC)	F		8,94,35,880
8	Total Net Basic Demand during , 2017 to September, 2019	G		19,03,70,048.00
9	GST @12%	H= G*12%		2,28,44,405.76
10	Total demand	I= G+H		21,32,14,453.76
11	Recalibrated Basic Price	J=G*(1-D) or 94.95% of G		18,07,56,360.58
12	GST @12%	K=J*12%		2,16,90,763.27
13	Commensurate demand price	L=J + K		20,24,47,123.85
14	Excess Collection of Demand or Profiteered Amount	L=I - L		1,07,67,329.91

- xv. The DGAP has claimed from Table-'C' above that the additional input tax credit of 5.05% of the turnover should have resulted in commensurate reduction in the basic prices as well as cum-tax prices. Therefore, in terms of Section 171 of the CGST Act, 2017, the benefit of additional ITC should have been passed on by the Respondent to the recipients. In other words, by not reducing the pre-GST basic prices by 5.05% on account of additional benefit of ITC and charging GST @ 12% on the pre-GST basic prices, the Respondent has contravened the provisions of Section 171 of the CGST Act, 2017.
- xvi. On the basis of the aforesaid CENVAT/ITC availability in the pre and post-GST periods and the demands raised by the Respondent on the Applicant No. 1 and other home buyers towards the value of construction on which GST liability @ 12% was discharged by the Respondent during the period 01.07.2017 to 30.09.2019, the amount of benefit of ITC not passed on to the recipients or in other words, the profiteered amount came to Rs. 1,07,67,330/- which included GST on the base profiteered amount of Rs. 96,13,687/-. The home buyer and unit No. wise break-up of this amount was given in Annexure-13 of the Report. This amount was inclusive of Rs. 1,03,453/- (including GST on the base amount of Rs. 92,369/-) which was the profiteered amount in respect of the Applicant No. 1, mentioned at serial No. 108 of Annexure-13 of the Report.
- xvii. The above computation of profiteering was with respect to 169 units (excluding 21 buyers who booked their units after 17.12.2018 post Completion Certificate) out of a total of 190 units as mentioned in the home-buyers' list. Whereas the Respondent had booked total 202 units as per the data submitted to the DGAP, in the pre-GST period, demands were raised from only 151 buyers who had booked the units, and the net total of demands raised from such units only had been taken into consideration. Similarly, in the post-GST period, demands were raised from 169 buyers who had booked the units before 17.12.2018 (pre Completion Certificate), and the net total of demands raised from such units only had been taken into consideration. If the ITC in respect of those units from whom no demands had been raised in the concerned period was considered for calculation of profiteering in respect of units where demands had been raised in the relevant period, the ITC as a percentage of turnover would be distorted and erroneous. Therefore, the

benefit of ITC in respect of those 12 (202-190) units would be calculated when the demands would be raised from such units by taking into account the proportionate ITC in respect of such units.

(i.e. 151 Units booked pre GST (A) + 51 Units booked post GST(B)=202;
Of (A), demands not raised on 12 between 1.07.2017 to 30.09.2019

Of (B), 21 Units booked after 17.12.2018 (after CC)

Hence, (151-12)+(51-21)=169 Units demands considered)

3. Consequently, the DGAP has concluded that post-GST, the benefit of additional ITC of 5.05% of the turnover had accrued to the Respondent for the project "MJR Clique Hydra". This benefit was required to be passed on to the recipients but this was not done. Therefore, Section 171 of the CGST Act, 2017 has been contravened by the Respondent, inasmuch as the additional benefit of ITC @ 5.05% of the base prices received by the Respondent during the period 01.07.2017 to 30.09.2019, has not been passed on by the Respondent to 190 recipients including the Applicant No. 1. These recipients were identifiable as per the documents provided by the Respondent, giving the names and addresses along with Unit Nos. allotted to such recipients. Therefore, the total additional amount of Rs. 1,07, 67,330 /- (Rupees One Crore Seven Lakh Sixty Seven Thousand Three Hundred and Thirty only) was required to be returned to the Applicant No. 1 and such eligible recipients. The DGAP has also stated that the Respondent has supplied construction services in the State of Karnataka only. The DGAP has further reported that, the present investigation covered the period from 01.07.2017 to 30.09.2019 and profiteering, if any, for the period post September, 2019, had not been examined as the exact quantum of ITC that would be available to the Respondent in future could not be determined at this stage, when the construction of the project was yet to be completed.

4. The above Report was considered by this Authority in its meeting held on 04.06.2020 and it was decided that the Applicants and the Respondent be asked to file their submissions before this Authority by 19.06.2020. A Notice dated 04.06.2020 was also issued to the above Respondent asking him to explain why the Report dated 01.06.2020 furnished by the DGAP should not be accepted and his liability for violating the provisions of Section 171 of the above Act should not be fixed. Thereafter, hearing via

videoconferencing was held on 05.02.2021 wherein Sh. Rajesh Kumar T. R., Chartered Accountant represented the Respondent. However, before the Order could be passed, one of the Technical Members of the Authority who had heard the matter was transferred out and thereafter the Chairman of the Authority had also left the Authority. Since, the quorum of the Authority of minimum three Members, as provided under Rule 134 was not available till 23.02.2022, the matter could not be decided. With the joining of two new Technical Members in February 2022, the quorum of the Authority was restored from 23.02.2022 and the personal hearing in the matter was accorded to the Respondent and Applicant No. 1 on 27.04.2022 via videoconferencing. Sh. S. Rajesh Kumar T. R. and Sh. G. Pattabhi, Chartered Accountants, appeared on behalf of the Respondent. Ms. Vinutha Prahlad, the Applicant No. 1 did not appear. Sh. Raminder Singh, Assistant Commissioner appeared on behalf of DGAP. During the course of proceedings, the Respondent has relied upon his submissions dated 21.08.2020, 13.11.2020 and 04.05.2022 wherein he has inter-alia stated that-

- i. He was undertaking construction of apartments in "MJR Clique Hydra", Project Electronic City Phase-I, Bengaluru. The construction of the above project had started during the Financial Year 2013-14 and completion certificate was obtained on 17.12.2018. The total area of construction was 3,45,690 Sq. Ft. which could be segregated as follows:-

Sl. No.	Description	Area
1.	Booked prior to 1st July 2017	1,79,890
2.	Booked after 1st July 2017 before 17th December 2018	30,770
3.	Booked after 17th December 2018	24,070
4.	Remained unsold as on September 2019	1,10,960
5.	Total	3,45,690

- ii. The VAT Input Tax Credit and CENVAT Credit for the period 2016-17 and April 2017 to June 2017 was Rs. 1,77,87,653/-.

- iii. The amount of Input Tax Credit of GST availed during the period post GST was Rs. 3,81,52,051/-. This credit included Rs. 35,26,800/- of ITC relating to unregistered supplies paid under RCM which was not liable to be paid pre-GST.
- iv. As far as the benefit of input tax credit was concerned, the basic prices post-GST got increased and were not decreased after introduction of GST and therefore no additional benefit accrued to him. Further since most of his purchases were from dealers and not manufacturers, there was no credit which he had foregone pre-GST but subsequently got benefit of the same. Instead there was increase in the GST rates on the inputs and input services for which he had paid extra. The additional credit of GST in quantum availed by him was additionally paid by him either due to increase in tax rate, or increase in cost of goods and services. Thereby, the Respondent has stated that no additional benefit accrued to him. Accordingly no benefit was passed on.
- v. The matter relating to constitutional validity of the provisions of Section 171 and Rules made thereunder was pending before Hon'ble Delhi High Court. The Respondent has requested that the matter be kept in abeyance till the issue of constitutional validity was decided.
- vi. The application filed by the Applicant No. 1 was not proper and the Respondent did not accept the fact of any profiteering. Thereby he has requested to dispose of the application as having no merits.
- vii. The Respondents has objected to the methodology adopted by the DGAP in computing the benefit of input tax credit as it was not in accordance with the provisions of Section 171 of CGST Act, 2017. The Respondent has submitted that Section 171, did not define what was the meaning of the term benefit of Input Tax Credits and in what circumstances and how to compute the same. In the absence of such prescription in law adoption of certain method without establishing the correctness of it thorough authority or guidelines by Parliament or Government was not legal and proper. It was well settled principles in law that if the valuation /quantification was not clear the levy itself failed. In this regard, the Respondent has placed reliance on the decisions of Hon'ble Supreme Court in the following cases:-
- a. CIT vs. B.C. Srinivasa Setty- (1981) 2 SCC 460;
 - b. Commissioner of C. Ex. & Cus., Kerala vs. Larsen & Toubro Ltd.

- viii. In the absence of any prescribed methodology prescribed by law, adoption of any particular method without explaining the theory and purpose beyond it and also explaining legal validity of such methodology would be arbitrary and was not legally correct.
- ix. The provisions of Section 171 mandated to reduce the price if there was reduction in output tax on one hand and also if there was benefit of input tax credit accruing to the supplier. In this regard, the Respondent has submitted that the term 'benefit' was employed in the statute with a purpose of any extra benefit without paying extra for it. He has further argued that, the benefit has to be understood in the context of profiteering. The meaning of the term 'profiteering' was explained in different dictionaries as follows:-
- Black's Law Dictionary - taking advantage of unusual or exceptional circumstances to make excessive profits;
 - Law Lexicon - To seek or obtain excessive profits, one who was given to make excessive profits;
 - Shorter Oxford Dictionary - Make or seek to make an excessive profit;
 - To seek or obtain excessive profits especially illegally
- x. Whereas the Report of DGAP did not bring out any of these factors, to establish that there was a benefit, which was accrued which otherwise would have not accrued to the Respondent. The Respondent has also submitted that the DGAP has made certain assumptions and presumptions to determine the profiteering, if any, whereas as per the methodology and understanding of the Respondent, the basis and methodology should be different.
- xi. The methodology adopted in the DGAP's Report for ascertaining the increase in input credit was not acceptable for the following reasons:-
- a) The availment of Input Tax Credit/CENVAT Credit was essentially linked to the expenditure incurred or to be incurred and not linked to the revenue. Adopting the percentage of credit to revenue without considering the expenditure incurred was improper. Example, with total realizable value of Rs. 1,000/- and cost of land Rs. 400/-

and cost of construction Rs. 400/- with 30% cost incurred pre-GST and 70% post-GST was as follows:-

Sl. No	Details	Case 1	Case 2	Case 3
1	ITC Pre-GST	Rs. 18	Rs. 18	Rs. 18
2	Revenue accrued/ realized Pre-GST	Rs. 400	Rs. 300	Rs. 200
3	% of ITC to Revenue- Pre-GST	4.50%	6.00%	9.00%
4	ITC Post - GST	Rs. 50	Rs. 50	Rs. 50
5	Revenue accrued / realized Pre-GST	Rs. 600	Rs. 700	Rs. 800
6	% of ITC to Revenue – Post-GST	8.33%	7.14%	6.25%
7	Difference in ITC %	3.83%	1.14%	-2.75%

- b) From the above table it could be seen that though the cost and ITC remained same, due to the fact that revenue was varying due to various factors like collection was based on milestone. Further, the buyers paid belatedly even after completion of the milestone and not exactly on milestone, expenses incurred but milestone not yet achieved etc. Therefore, the percentage of ITC/CENVAT credit to sales was not the proper method of computation of excess credit, if any;
- c) The input tax credit was dependent upon the type of expenditure incurred during the relevant period. The ideal way for computation of differential credit post GST from that of pre GST would have been based on cost and not based on revenue. Therefore, the methodology adopted was not appropriate;
- d) Further also, in certain period where the wages or labour costs were involved, which might not have more credit. Whereas if there was material cost, there would be more credits;
- e) The pre-GST revenue included more of land cost and lesser towards construction cost, whereas post GST revenue included more of

construction cost than land cost, thereby there would be complete distortion in ITC percentage;

- f) The comparison of ITC of same expenditures has to be considered and cannot be compared to different types of expenditures incurred pre-GST and post-GST.
- g) The increase in input credit would be due to increase in the tax rate paid on the goods and services received. Earlier, Service Tax was 15% whereas GST was 18%. If it was works contract, GST was 18% whereas including VAT and Service Tax it was around 14 to 15%. Therefore increase in credit was also due to increase in tax rate and it could not be considered to be any benefit.
- h) The additional credit available of the taxes extra paid could not be considered to be benefit of input tax. In other words, if there was no reduction in basic price compared to the pre-GST, the amount of tax was paid extra and the extra paid tax was being taken as credit. Hence, the same could not be considered as benefit of input tax credit which has been explained with the following example:-

Sl No.	Details	Item 1	Item 2	Item 3
1	Pre- GST Basic Cost	100	100	100
2	VAT	14.5	14.5	14.5
3	Taxes Paid	14.50	14.50	14.50
4	ITC availed	14.50	14.50	14.50
5	Post GST Cost	120	100	90
6	GST	21.6	18	16.2
7	Taxes Paid	21.60	18.00	16.20
8	ITC availed	21.60	18.00	16.20
9	Increase in tax payment	7.10	3.50	1.70
10	Increase in ITC	7.10	3.50	1.70
11	Excess Benefit	0.00	0.00	0.00

- xii. Therefore, the Respondent has objected to the methodology adopted in the Report as the Table-B of the DGAP's Report determined the percentage of excess ITC to turnover. On account of which he has the following objections:-

- a. The computation of alleged benefit of ITC by arriving at the percentage of Input Tax Credit/CENVAT Credit to amounts received was not scientific in construction projects;
 - b. Post-GST, the ITC amount should not include RCM taxes paid as it was not payable during pre-GST period which he was made to pay during post-GST period.
 - c. Even in the computation made by the DGAP, the area booked pre-GST was taken as 1,77,000 Sq. Ft. whereas actual Sq. Ft. as per computation was 1,79,890 Sq. Ft. [The area booked pre-GST and area booked post-GST was provided in list of home buyers' list submitted which was taken cognizance at para 11 (k) of the Report.
 - d. Further the computation has taken the value of revenue received only and not revenue accrued, yet to be received. Since the project was completed in December 2018 the value of amount accrued, yet to be received also should have been added to revenue. The value in Sl. No. 5 of Table B column post-GST would be Rs. 29,88,87,857/- instead of Rs. 27,98,05,928/-.
 - e. Further, the computation of amount was also made only relating to construction. There were other taxable amounts received by him in post-GST period, which should be added for the post GST taxable turnover.
 - f. By giving effect to the above points other than point e above the pre-GST credit percentage would be 3.77% and post-GST credit would be 7.78% and the difference in credit rate would be 4.01 % as against the 5.05% determined in the above table.
- xiii. The allegations/findings in para 20 of the DGAP's Report were not correct as the methodology adopted itself was not correct. If assumed the methodology was correct then the revised percentage should have been at 4.01% and not 5.05% as per the revised computation enclosed as evidence.
- xiv. The quantum of profiteering was arrived at in Table-C of the DGAP's Report. The Respondent has submitted the following points with regard to the above computation:-
- a) The amount at Sl. No. 6 included the value which was pre-GST, post-GST and also post obtaining completion certificate.
 - b) Sl. No. 7 only reduced the flats which were booked after completion certificate. The Respondent has submitted that the flats booked post-GST were not affected by anti-profiteering provision since the price

would be based on market consideration prevailing during that point of time and also taking into consideration the revised costs of the project net of GST credits. Therefore, to arrive at the value at Sl. No. 8, the reduction should have been made as to the collection pertaining to post-GST bookings. The amount of revenue relatable to flats booked post-GST was Rs. 11,07,52,014/-. After reducing the same the amount at Sl. No. 8 would have been Rs. 9,86,99,963/-.

- c) Further, also the Sl. No. 10 was computed including the GST charged to the customers. Since the entire amount collected was remitted to Government, even if there was excess, the same should be claimed as refund by the buyers and it could not be asked to be paid by the Respondent again as the same amount was not at all retained. It was not what should have been done, instead what was benefitted has to be seen. Since no benefit had accrued and retained by the Respondent in this regard, addition of the output GST again over and above the ITC benefit was not proper.
- d) Giving effect to this value, and adopting the revised increase in credit as mentioned above, the revised amount at Sl. No. 14 would be Rs. 46,09,683/-, as per the revised computation given in Annexure-I.
- xv. The findings given at para 26 of the DGAP's Report were not sustainable for the reason that it was stated that the construction was not complete. However, the completion certificate was received in December 2018.
5. Supplementary Reports were sought from the DGAP against the Respondent's submissions dated 21.08.2020 and 04.05.2022. In response, the DGAP vide his replies dated 09.09.2020 and 27.05.2022 respectively has submitted as under:-
- a) As per the home buyers' list furnished by the Respondent which was relied upon while carrying out the investigation, the actual area sold in pre-GST regime i.e., prior to 01.07.2017 was 1,77,000 sq. ft. only.
- b) If the Respondent had received supplies from the unregistered suppliers and paid GST under RCM, the Respondent had become eligible to avail ITC of the same which was not available to the Respondent in pre-GST regime which has accrued more benefit of ITC to the Respondent. In pre-GST regime, even if the Respondent was receiving supplies from unregistered suppliers, there was no ITC benefit available to the Respondent.

- c) In the erstwhile pre-GST regime, various taxes and cesses were being levied by the Central Government and the State Governments, which got subsumed in the GST. Out of these taxes, the ITC of some taxes was not being allowed in the erstwhile tax regime. For example, the ITC of Central Sales Tax, which was being collected and appropriated by the States, was not admissible. Similarly, in case of construction service, while the ITC of Service Tax was available, the ITC of Central Excise Duty paid on inputs was not available to the service provider. Such input taxes, the credit of which was not allowed in the erstwhile tax regime, used to get embedded in the cost of the goods or services supplied, resulting in increased price. With the introduction of GST with effect from 01.07.2017, all these taxes got subsumed in the GST and the ITC of GST became available in respect of all goods and services, unless specifically denied. Broadly, the additional benefit of ITC in the GST regime would be limited to those input taxes, the credit of which was not allowed in the pre-GST regime, but allowed in the GST regime. The additional benefit of ITC in the GST regime was required to be passed on by the suppliers to the recipients by way of commensurate reduction in prices, in terms of Section 171 of GST Act, 2017.
- d) The application filed by the Applicant No. 1 was proper and in pursuance of the same the profiteering computed in the present case was correct in terms of Section 171 of the CGST Act, 2017.
- e) As per Rule 126 of the CGST Rules, 2017, this Authority has been empowered to determine the methodology and procedure for determination as to whether the reduction in the rate of tax or the benefit of ITC has been passed on by the registered person to the recipients by way of commensurate reduction in prices. This Authority in exercise of power delegated to it under the Rule 126 has notified the Methodology & Procedure vide Notification dated 28.03.2018 which was also available on the website. However, it was submitted that no fixed/uniform mathematical methodology can be determined for all the cases of profiteering as the facts and circumstances of each case as well as the nature of goods or services supplied in each case differ. Therefore, the determination of the profited amount has to be computed by taking into account the particular facts of each case. The computation of commensurate reduction in prices was purely a mathematical exercise

which was 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 was required to pass on to a recipient or the profited amount. The DGAP has further stated that on the basis of information/data provided by the Respondent, the actual ITC available to the Respondent in pre and post-GST regime and consequently the actual quantum of profiteering or the benefit of additional ITC available to Respondent has been clearly outlined in the Report dated 01.06.2020 of the DGAP.

- f) "Input Tax" and "ITC" were defined under Section 2(62) and 2(63) respectively in the CGST Act, 2017. However, the additional ITC was the amount of ITC which was available to the Respondent in GST regime in addition to the ITC which was available to him in pre-GST regime. This was because in the erstwhile pre-GST regime, various taxes and cesses were being levied by the Central Government and the State Governments, which got subsumed in the GST. Out of these taxes, the ITC of some taxes was not being allowed in the erstwhile tax regime. With the introduction of GST with effect from 01.07.2017, all these taxes got subsumed in the GST and the ITC of GST became available in respect of all goods and services, unless specifically denied.
- g) Section 171(1) 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.*" It was abundantly clear that the legal requirement was that in the event of a benefit of ITC or reduction in rate of tax, this benefit must be passed on to the recipients by way of commensurate reduction in prices of the goods or services. In the present case, there was additional benefit of ITC which has accrued to the Respondent after implementation of GST as stated above. Therefore, the present case clearly fell within the scope of Section 171(1) of the CGST Act, 2017. The DGAP has stated that the assertion of the Respondent that it was well settled principle in law that if the valuation/quantification was not clear, the levy itself failed, was not correct.
- h) No tax has been levied/imposed under Section 171 of the CGST Act, 2017 and hence no methodology and procedure was required to be framed separately under Section 171 as it itself prescribed such

methodology and procedure. Therefore, the facts of the case in the case law referred were different from those of the present case.

- i) The legislature had delegated the task of prescribing the powers and functions of the Authority to the Central Government as per Section 171 of CGST Act, 2017 read with Section 2 (87) of the Act, on the recommendation of the GST Council. The Central Government, on the recommendation of the GST Council, which was a constitutional Federal Body under 101th Amendment of the constitution, has formulated and notified Rule 126, 127 and 133, which prescribed the functions, duties and powers of the Authority. All Rules of Anti-profiteering have been framed under Section 164 of the CGST Act, 2017 which has the sanction of the Parliament and the State Legislatures. It also showed that the delegated power to the Authority given under Section 171(3) of the said Act has been duly exercised by the Central Government by formulating the Rules, on the recommendation of the GST Council. Therefore, the powers to determine its own methodology under Rule 126 was justified and enabled this Authority to clarify and effectuate the powers given and functions to be discharged by this Authority and this enabling provision has been granted to this Authority after careful consideration at several stages and levels and therefore there was no ground for challenging the legal validity of the methodology which was legally correct and not arbitrary.
- j) Section 171(1) of the CGST Act, 2017 was very clear which stated that any reduction in the rate of tax or the benefit of ITC has to be passed on to the recipient by way of commensurate reduction in prices. Therefore, the said Section 171 only required the supplier to pass on the benefit of reduction in rate of tax or the benefit of ITC to the recipients by reducing the prices commensurately. Both the above benefits have been granted by the Central as well as the State Governments by sacrificing their tax revenue in the public interest and hence the suppliers were not required to pay even a single penny from their own pocket and hence, they have to pass on the above benefits as per the provisions of Section 171 (1) of the CGST Act, 2017. Section 171(1) 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.*"
- It was abundantly clear that the legal requirement was 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 goods or services. In the present case, there was additional benefit of ITC which has accrued to the Respondent after implementation of GST. In the present case, profiteering has been arrived at by comparing the ITC available to the Respondent in pre and post-GST era. Before the GST was introduced, the Respondent was availing CENVAT credit of Service Tax paid on input services and VAT paid on inputs but CENVAT credit of the Central Excise Duty paid on inputs was not admissible which was embedded in the cost to the Respondent. However, post-GST, i.e., w.e.f. 01.07.2017, the Respondent could avail ITC of GST paid on all the inputs and the input services including the sub-contracts. Therefore, in GST era, the Respondent has additional benefit of ITC which was computed and reported in the Report dated 01.06.2020 furnished by the DGAP. The DGAP has stated that if the GST had not been introduced, this additional benefit of ITC would not have accrued to the Respondent.

- k) The entire Report dated 01.06.2020 was completely based on the information/data provided by the Respondent and no assumptions and presumptions have been made.
- l) The ITC was available on the inputs (goods and services) purchased/used in the project, which was a cost to the Respondent. Hence, when ITC was being considered in the investigation then it implied that the cost/expenditure to the Respondent has been considered. The DGAP has also stated that Section 171(1) of the CGST Act, 2017 was very clear which stated that any reduction in the rate of tax or the benefit of ITC has to be passed on to the recipient by way of commensurate reduction in price. Therefore, the benefit of ITC was to be passed on to each recipient or to flat buyers in the present case. Now, if output taxable turnover was not considered in the investigation then it would be difficult to ascertain that out of total benefit of ITC accrued to the Respondent in the GST period, what amount of benefit was to be passed on to which recipient or flat buyer. Since each recipient was eligible to get his/her due benefit in terms of above Section, the output taxable turnover was to be considered or in the present case the amount raised by the Respondent from his flat buyers was to be considered. On the basis of the same, the total benefit of ITC would be proportionately

passed on to each recipient/flat buyer. Though, the input credit on taxes had no direct nexus with the output turnover but the credit so availed was for payment of tax on behalf of the buyers and additional benefit whatsoever accrued would have to be passed to the flat buyers. Hence, the methodology on the basis of the cost adopted by the Respondent in this regard could not be accepted as it was not based on correct interpretation of the above provisions of Section 171. The DGAP has further argued that the illustrations given by the Respondent were purely based on the assumption which has got nothing to do with the facts of the case. The additional benefit of the ITC accrued to the Respondent was determined only on the basis of the facts of the present case. The DGAP has also mentioned that the additional benefit of the ITC accrued at any given point of time was associated with the whole project whereas the benefit of ITC required to be passed on in terms of Section 171 would be computed proportionate with the area sold and the actual amount to be passed on to each home buyer can only be determined by factoring the demand raised from the home buyers or advance received from them. Thus, the turnover considered for the computation of the profiteering pertained to the sold units only in the project. Whereas, as stated above, the total ITC availed pertained to the entire project of the Respondent. Therefore, to determine the actual ITC attributable to the sold units, the proportionate turnover was considered.

m) The turnover or collection was based on milestones and even the buyers paid belatedly even after completion of the milestone, a reasonably long period of 2 years and 2 months (01.07.2017 to 30.09.2019) has been considered to compute the profiteering and the DGAP has mentioned that for the present project, the completion certificate was received on 17.12.2018 by the Respondent. Hence, any amount received even after receipt of the completion certificate has also been considered by the DGAP in his investigation. The DGAP has further stated that in the present case, the Respondent's project "MJR Clique Hydra" was started in the pre-GST regime. Therefore, the basic price of the flats was arrived by the Respondent only after due consideration of all the expenses and non-creditable costs. Most of these non-creditable costs were related to non-availability of ITC of Central Excise Duty paid on inputs and other such costs. In GST regime from 01.07.2017 onwards, the credit of such

non-creditable costs became creditable or in other words, the ITC of GST paid on all goods and services was available to the Respondent for payment of his GST liabilities.

- n) The sale of land being a transfer of immovable property was outside the ambit of both Service Tax as well as GST. There was no implication of the cost of land in arriving at the ratio of total credit available to the Respondent, as abatement for the same was provided in determination of taxable turnover. Further, cost of land and construction cost were integral parts of the cost of project and were already accounted for in the turnover i.e. demands made from the flat buyers which has no relevance whatsoever in determination of the benefit of the additional ITC that accrued to a supplier (the Respondent) due to implementation of GST, which was required to be passed on to the recipients (the flat buyers) in terms of Section 171 of the CGST Act, 2017. Therefore, DGAP has conducted his investigation within the scope of Section 171 of the CGST Act, 2017 and Rules made thereunder, on the basis of information and documents collected from the Respondent and submitted the Report on his findings to this Authority. Thus, the DGAP has claimed that the percentage of the ITC to the relevant turnover was proper and justified.
- o) The Respondent was collecting the amounts in the form of cash from his customers which included the basic price as well as tax (GST) amount. Now, the GST charged by the Respondent from his customers was to be deposited with the Government exchequer. But this amount of tax was being paid by the Respondent by utilizing the ITC and not in the form of cash. Hence, the amount collected from the customers in the form of cash in lieu of GST was being retained by the Respondent. The DGAP has also stated that the ITC being utilized by the Respondent for the payment of GST to the Government exchequer was the ITC which was not available to him in pre-GST regime. Hence the Respondent has benefitted with this additional ITC in post-GST regime which was required to be passed on to the recipients/customers in terms of Section 171(1) of the CGST Act, 2017. Moreover, any increase in tax component was charged to and collected from customers, whereas any increase in the quantum of ITC might be pocketed.
- p) Under the provisions of Section 13 of the CGST Act, 2017 read with Section 15(1) and 31(2) of the CGST Act, 2017, the demand raised has

been considered as the value of taxable supply of service in the present case. Therefore, as per the home buyers list furnished by the Respondent, the actual amount raised in post-GST regime was Rs. 27,98,05,928/- only. The DGAP has also submitted that the amount raised by the Respondent from his home buyers as furnished in home buyers list has been considered. No such submission was made by the Respondent during the investigation that he had received other taxable amounts from the buyers in post GST period.

- q) The amount at Sl. No. 6 of the Table-C of his Report was amount raised in post-GST period only which was exclusive of amounts pertaining to the pre-GST period. Sl. No. 5 of Table-B of the Report dated 01.06.2020 might be referred in this regard. However, the amounts raised post obtaining completion certificate have been included in terms of Para 5 of the Schedule III, read with clause (b) of Para 5 of the Schedule II of the CGST Act, 2017.
- r) The amounts pertaining to the flats booked after obtaining completion certificate did not attract GST in terms of Para 5 of the Schedule III of the CGST Act, 2017. However, the amount pertaining to the flats booked post GST prior to obtaining completion certificate, were required to be considered as such home buyers were also eligible to get their due benefit of the ITC from the Respondent.
- s) The price included both the basic price and the tax charged on it. Therefore, any excess amount collected from recipients, even in the form of tax in excess of what was to be legally collected, must be returned to the recipients. By not reducing the basic prices commensurately in terms of Section 171 of the CGST Act, 2017, the Respondent forced his customers/flat buyers to pay extra tax which they were not liable to pay. Therefore, it was clear that the amount of extra tax (GST) on the increased basic price was the amount paid by the flat buyers which they were not supposed to pay. If any supplier has charged more tax from the recipients, the aforesaid statutory provisions would require that such 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 notes 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 to return the tax amount to the recipients by issuing credit notes and adjust his tax liability for the subsequent period to that extent.

- t) Though the Respondent received the completion certificate for the present project on 17.12.2018, but the Respondent was raising demands from the home buyers even after receipt of the completion certificate. Therefore, vide Para 26 of the Report dated 01.06.2020, the DGAP has submitted that any amounts which were to be received after September, 2019 i.e. from October, 2019 onwards, had not been considered as the investigation period covered under the above Report was from 01.07.2017 to 30.09.2019 only. The DGAP has also stated that the additional benefit accrued to the Respondent has been clearly outlined in the Report dated 01.06.2020.
- u) Vide his supplementary reports dated 01.12.2020 and 27.05.2022, the DGAP has additionally submitted that the "ITC" as defined under Section 2(63) of the CGST Act, 2017, meant the credit of input tax. Hence, ITC was clearly based on the input tax i.e. the tax paid by the Respondent on the supplies of goods and services received by the Respondent. If Respondent paid more input tax, more ITC would be available to the Respondent and vice-versa. The Respondent has entirely misinterpreted the concept of Section 171 of the CGST Act, 2017 that even without incurring any extra tax burden, additional amount of ITC has to be passed on. Therefore, without paying input tax, ITC could not be available. The DGAP has further stated that under RCM in GST, the liability to pay the tax to the Government exchequer merely shifted from supplier to the receiver of the supplies. If, the Respondent was receiving supplies from the unregistered supplier, the Respondent was not bearing any extra burden of the tax, but only making payment of tax to the Government exchequer on the supplies received directly. Otherwise, if the supplier was registered, the Respondent would have paid the amount of tax to the supplier and the supplier would have deposited the same with the Govt. Furthermore, the DGAP has mentioned that in pre-GST regime, though the tax component was included in the prices of supplies received by the Respondent from the unregistered person/dealer but

CENVAT/ITC was not available to the Respondent for the same, whereas in GST regime, since the Respondent was paying GST under RCM, the same was available to the Respondent as ITC.

- v) Illustrated how the benefit of ITC in GST regime was available to a registered person in continuation of his earlier reply dated 10.09.2020. Though, the DGAP's investigation has not examined the cost components specifically Central Excise Duty, but same was equally applicable to the Respondent irrespective of his purchases from Dealers or Manufacturers. The Central Excise Duty was included in the cost of goods like Steel, Cement etc. purchased by the Respondent in pre-GST period from Dealers. Moreover, the Respondent was paying State VAT on these goods which had a cascading effect. However, in GST regime, both these taxes have been subsumed in a single tax, i.e., GST and there was no tax on tax. In similar way, the prices of the goods have decreased in the GST regime following the benefit of ITC.
- w) The output tax liability in the present case has also reduced as evident from the rate of taxes applicable in the pre and post-GST period as under:-

Pre-GST			
Tax	Rate	Abatement	Net Effective Rate
Service Tax	15%	60%	6%
State VAT	14.5%	30%	10.15%
Total			16.15%

Post-GST			
Tax	Rate	Abatement	Net Effective Rate
Central GST	9%	33.33%	6%
State GST	9%	33.33%	6%
Total			12%

- x) As per the statutory returns filed by the Respondent in pre and post GST periods, the payment of taxes made by the Respondent in pre and post GST periods was as under:-

- i. Pre-GST:- As per the Service Tax returns filed by the Respondent for the period 01.04.2016 to 30.06.2017, the total Service Tax payable was Rs. 5.85 Cr., out of which the Respondent paid Service Tax of Rs. 2.20 Cr. through cash

which was 38% (approx.) of the total ST payable whereas the Respondent paid ST of Rs. 2.69 Cr. through CENVAT Credit which was 46% (approx.) of the total ST payable.

- ii. Post-GST:- As per the GSTR-3B filed by the Respondent for the period 01.07.2017 to 30.09.2019, the total GST payable was Rs. 9.46 Cr., out of which the Respondent paid GST of Rs. 0.39 Cr. through cash which was 4% (approx.) of the total GST payable whereas the Respondent paid GST of Rs. 9.07 Cr. through ITC which was 96% (approx.) of the total GST payable.
- y) From the above findings, it would emerge that the Respondent was paying his tax liabilities more through ITC in GST period (more than double as compared to pre-GST period). Hence, the DGAP has inferred that the Respondent has been benefitted with the ITC in post-GST period. The DGAP has further mentioned that the Respondent was collecting the amounts/demands from his customers/home buyers in the form of cash (through cash/cheque/DD etc.) which included the basic price of the flats/units as well as tax (GST) amount. Now, the GST charged by the Respondent from his customers was to be deposited with the Government exchequer. But this amount of tax was being paid by the Respondent by utilizing the ITC (96% approx.) and merely 4% by cash. Hence, most of the part of the amount collected from the customers in the form of cash in lieu of GST was being retained by the Respondent. Further, large portion of this ITC being utilized by the Respondent for the payment of GST to the Government exchequer was the ITC which was not available to him in pre-GST regime. Hence, the Respondent has benefitted with this additional ITC in post-GST regime which was required to be passed on to the recipients/customers in terms of Section 171(1) of the CGST Act, 2017. Moreover, any increase in tax component was charged to and collected from customers, whereas any increase in the quantum of ITC might be pocketed.
- z) The Respondent has ingeniously not considered the Service Tax in the pre-GST period and is merely taking the VAT component, hence comparison made by the Respondent was not correct. The anti-profiteering measures provided under Section 171 of the CGST Act, 2017 were entirely based on the CGST Act, 2017 and all the provisions

of the above Act were applicable to anti-profiteering also. The DGAP has further submitted that the provisions of Section 76 were applicable to the specific cases where any person who has collected from any other person any amount as representing the tax under CGST Act, 2017 and has not paid the said amount to the Government. Accordingly, in terms of Section 76(1), such person would forthwith pay the amount to the Government, irrespective of whether the supplies in respect of which such amount was collected were taxable or not. The DGAP has further stated that, in terms of Section 76(10), if any surplus amount of tax was left after the adjustment under sub-section (9), that amount would either be credited to the Fund or refunded to the person who has borne the incidence of such amount. Hence, the provisions of Section 76(10) were applicable with the provisions of sub-section (9) of the Section 76 of the CGST Act, 2017 only which were not applicable in the present case.

6. The Authority has carefully considered the Reports of the DGAP, submissions made by the Respondent including during the personal hearing and the case record and the Authority observe that the Respondent is in the real-estate business and has been developing his project "MJR Clique Hydra" in Bengaluru. It is on record that Applicant No. 1 had filed a complaint alleging that the Respondent has not passed on the benefit of ITC to her by way of a commensurate reduction in the price of the flat purchased by her (Applicant No. 1) from the Respondent. We find that the DGAP, after a detailed investigation, has found that the Respondent has not passed on ITC benefit amounting to Rs. 1,07,67,330/- (inclusive of GST) to his recipients/homebuyers as required under the provisions of Section 171 of the CGST Act, 2017. We observe that the details of the benefit required to be passed on to the eligible homebuyers have been detailed by the DGAP vide Annexure-13 of his Report dated 01.06.2020.
7. On examining the various submissions we find that the following issues need to be addressed:-
- Whether there was any violation of the provisions of Section 171 (1) of the CGST Act, 2017 in this case?
 - If yes what was the additional benefit of ITC that has to be passed on to the recipients?

- c) Besides the above, various other issues raised by the Respondent viz. constitutional validity of Section 171, methodology adopted by the DGAP, cost of land for inclusion in the value etc. also need to be addressed by the Authority.
8. On the issue of reduction in the tax rate, it is apparent from the DGAP's Report that there has been no reduction in the rate of tax in the post GST period; hence the other issue to be examined is as to whether there was any net benefit of ITC with the introduction of GST, which could have been transferred to recipients.
- (a) On this issue it has been reported by the DGAP, as tabulated above, that the ITC as a percentage of the turnover that was available to the Respondent during the pre-GST period (April-2016 to June-2017) was 3.71% and during the post-GST period (July-2017 to September-2019), it was 8.76%. Hence, according to the DGAP, post-GST, the Respondent has been benefited from additional ITC to the tune of 5.05% (8.76%-3.71%) of his turnover and the same was required to be passed on to the Applicant No. 1 and the other customers/ flat buyers/ recipients. Therefore, the amount of ITC benefit to be passed on to all the customers/ flat buyers/ recipients is Rs. 1,07,67,330/-.
- (b) However, the Respondent has questioned the above methodology adopted by the DGAP in computing the benefit of input tax credit as it was not in accordance with the provisions of Section 171 of CGST Act, 2017. In this regard, this Authority finds that the the 'Procedure and Methodology' for passing on the benefits of reduction in the rate of tax and ITC or for computation of the profiteered amount 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."
- (c) It is apparent 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 and the State Governments or a registered supplier avails benefit of additional ITC post GST implementation, 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 scarce and precious tax

revenue. It also provides that the above benefits are to be passed on any supply i.e. on each product or unit of construction or service to every buyer and in case they are not passed on, the quantum of denial of these benefits or the profiteered amount has to be computed for which investigation has to be conducted in respect of all such products/units/services by the DGAP. What would be the 'profiteered amount' has been clearly defined in the explanation attached to Section 171.

- (d) These benefits can also not be passed on at the entity / organisation / branch/ invoice/ business vertical level as they have to be passed on to each and every buyer at each product/unit/service level by treating him equally.
- (e) The above provision also mentions "any supply" which connotes each taxable supply made to each recipient thereby making it evident that a supplier cannot claim that he has passed on more benefit to one customer on a particular product therefore he would pass less benefit or no benefit to another customer than what is actually due to that customer, on another product. Each customer is entitled to receive the benefit of tax reduction or ITC on each product or unit or service purchased by him subject to his eligibility.
- (f) The term "commensurate" mentioned in the above sub-section provides the extent of benefit to be passed on by way of reduction in the price which has to be computed in respect of each product or unit or service based on the price and the rate of tax reduction or the additional ITC which has become available to a registered person.
- (g) The legislature has deliberately not used the word 'equal' or 'equivalent' in this Section and used the word 'Commensurate' as it had no intention that it should be used to denote proportionality and adequacy. The benefit of additional ITC would depend on the comparison of the ITC/CENVAT credit which was available to a builder in the pre-GST period with the ITC available to him in the post GST period w.e.f. 01.07.2017.
- (h) Similarly, the benefit of tax reduction would depend upon the pre rate reduction price of the product and quantum of reduction in the rate of tax from the date of its notification. 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 or unit to unit or service to service 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 buyer.

- (i) Computation of the profiteered amount is also a mathematical exercise which can be done by any person who has elementary knowledge of accounts and mathematics as per the Explanation attached to Section 171.
- (j) To further explain the legislative intent behind the above provision, this 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. However, no fixed mathematical formula, in respect of all the Sectors or the products or the services, can be set for passing on the above benefits or for computation of the profiteered amount, as the facts of each case are different.
- (k) In the case of one real estate project, date of start and completion of the project, price of the flat/shop, mode of payment of price or instalments, stage of completion of the project, rates of taxes pre and post GST implementation, amount of CENVAT credit and ITC available, total saleable area, area sold and the taxable turnover received before and after the GST implementation would always be different from 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 the other project. Therefore, no set procedure or mathematical methodology can be framed for determining the benefit of additional ITC which has to be passed on to the buyers of the units.
- (l) Moreover, this Authority under Rule 126 has been empowered to 'determine' Methodology & Procedure and not to 'prescribe' it. Similarly, the facts of the cases relating to the sectors of Fast Moving Consumer Goods (FMCG), restaurant service, construction service and cinema service are completely different from each other and therefore, the mathematical methodology adopted in the case of one sector cannot be applied to the other sector.
- (m) Moreover, both the above benefits are being given by the Central as well as the State Governments as a special concession out of their

tax revenue in the public interest and hence the suppliers are not required to pay even a single penny from their own pocket and therefore, they are bound to pass on the above benefits as per the provisions of Section 171 (1) which are abundantly clear, unambiguous, mandatory and legally enforceable.

(n) It is abundantly clear from the above narration of the facts and the law that no elaborate mathematical calculations are required to be prescribed separately for passing on the benefit of ITC and computation of the profiteered amount.

(o) The Respondent cannot deny the benefit of ITC to his customers on the above ground and enrich himself at the expense of his buyers as Section 171 provides clear cut methodology and procedure to compute the benefit of ITC and the profiteered amount and he is well aware of the benefit of additional ITC which he has obtained post-GST. N

In view of the above said submissions, the Authority finds that the contention of the Respondent regarding absence of methodology is untenable and hence rejected.

9. The Respondent has alleged that Section 171 of the CGST Act, 2017 is ultra vires of the constitution and thus, investigation should be either dropped or kept in abeyance till the constitutional validity was being scrutinised by the Hon'ble High Court.

(a) In this connection it would be appropriate to mention that this Authority has not acted in any way as price controller or regulator as it doesn't have the mandate to regulate the same. The Respondent is absolutely free to exercise his right to practise any profession, or to carry on any occupation, trade or business, as per the provisions of Article 14 and 19 (1) (g) of the Constitution. He can also fix his prices and profit margins in respect of the supplies made by him. Under Section 171 this Authority has only been mandated to ensure that both the benefits of tax reduction and ITC which are the sacrifices of precious tax revenue made from the kitty of the Central and the State Governments are passed on to the end consumers who bear the burden of tax.

(b) The intent of this provision is the welfare of the consumers who are voiceless, unorganised and vulnerable. This Authority is charged with the

responsibility of ensuring that the both the above benefits are passed on to the general public as per the provisions of Section 171 read with Rule 127 and 133 of the CGST Rules, 2017. Hence, the anti-profiteering related Rules and Section 171 of the Act have express approval of the Parliament, all the State Legislatures, the Central and all the State Governments and the GST Council and therefore, Section 171 and the Rules are constitutional and are not violative of Article 14 and 19 (1) (g) of the Constitution. This Authority has nowhere interfered with the business decisions of the Respondent.

(c) The Respondent has also contended that "Profiteering" has not been defined in the CGST Act or the Rules therefore, he has cited the definitions of "Profiteer/Profiteering" from Black's Law Dictionary, Law Lexicon and Shorter Oxford Dictionary in his support. However, the Authority finds that the word "profiteered" has been duly defined in the Explanation attached to Section 171 of the above Act as under:-

"Explanation : For the purposes of this section, the expression "profiteered" shall mean the amount determined on account of not passing the benefit of reduction in rate of tax on supply of goods or services or both or the benefit of ITC to the recipient by way of commensurate reduction in the price of the goods or services or both."

Based on the above Explanation there is no doubt on the definition of profiteering which has been duly incorporated in the CGST Act, 2017 and hence the above contention of the Respondent is incorrect and the interpretation given by the Respondent is untenable.

10. The Respondent has mentioned the Apex Court's judgement passed in the case of CIT v. B. C. Srinivasa Setty- (1981) 2 SCC 460 in support of his argument. Careful perusal of this judgement shows that it involved valuation of the goodwill for computation of income tax which is not the issue in the present case. The Respondent has also cited the judgement passed in the case of Commissioner of C. Ex. & Cus., Kerala vs Larsen & Toubro Ltd. 2015 (039) STR 0913 (S.C.) in which the issue involved, is the levy of Service Tax on the undivisible works contracts which is not the matter in the present case. Therefore the above cases have no relevance in the facts of the present case.
11. The Respondent has claimed that the availment of Input Tax Credit/CENVAT Credit was essentially linked to the expenditure incurred or to be incurred and

not linked to the revenue. Adopting the percentage of credit to revenue without considering the expenditure incurred was improper.

This Authority finds that the DGAP has rightly considered the revenue related to flats from homebuyers' list submitted by the Respondent himself wherein the Respondent has received payment from buyers. Accordingly, the DGAP has correctly computed the profiteered amount by taking ITC to revenue ratios in the pre-GST & post-GST periods into account which is correct, reasonable and logical and in accordance with the mandate of Section 171 of the CGST Act, 2017. Since availment of ITC is certainly related to the revenue which includes the amount collected from the buyers as he utilises ITC to discharge his final output liability and tax which he recovers from buyers through invoices on monthly basis. As such, the contention of the Respondent is untenable and hence rejected.

12. The Respondent has argued that the increase in input credit was due to increase in the tax rate paid on the goods and services received. Earlier, Service Tax was 15% whereas GST is 18%. The rate of GST on Works Contract is 18% whereas earlier VAT and Service Tax was around 14 to 15%. Therefore, increase in credit was also due to increase in tax rate and it could not be considered to be any benefit.

The Authority finds no merit in this argument. The Respondent has not been compelled to pay more GST on services of 18% when Service Tax in the pre-GST period was 15%, as not even a single rupee of tax was being paid in the pre-GST regime or in the post-GST regime by him from his own pocket, as he was getting full CENVAT credit of certain taxes paid by him in the pre-GST period and was embedding those taxes on which ITC was not available like the Central Excise Duty in his cost of the flat and realizing it from his customers. He is also, now, getting full ITC of all the taxes paid by him on his purchase of goods and services in the post GST period and is also charging GST from his buyers.

13. The Respondent has contended that he had availed the Input Tax Credit of Rs. 3,81,52,051/- during post GST period which included ITC of Rs. 35,26,800/- relating to unregistered supplies paid under Reverse Charge Mechanism (RCM) which was not liable to be paid during pre-GST period. The Respondent has stated that post-GST, the ITC amount should not include RCM

taxes paid as it was not payable during pre-GST period and he was made to pay during post-GST period.

This Authority finds that, in pre-GST regime, even if the Respondent was receiving supplies from unregistered suppliers, there was no ITC benefit available to the Respondent. In the GST regime, the Respondent has received supplies from the unregistered suppliers and paid GST under RCM and became eligible to avail ITC of the same which was not available to him in pre-GST regime. Hence, now more benefit of ITC has accrued to him. Hence this this Authority finds no merit in this plea of the Respondent.

14. The Respondent has claimed that even in the computation made by the DGAP, the area booked pre-GST was taken as 1,77,000 sq. ft. whereas actual sq. ft. as per computation was 1,79,890 sq. ft.

The Authority finds that, it is evident from the home buyers' list, as submitted by the Respondent himself, that the DGAP has correctly considered the actual area sold in pre-GST regime i.e., prior to 01.07.2017 as 1,77,000 sq. ft. which was relied upon while carrying out the investigation. Hence, the above claim of the Respondent is not tenable as it is contrary to the records submitted by the Respondent himself.

15. The Respondent has contended that the the DGAP in his computation has only considered the value of revenue received only and not revenue accrued, yet to be received.

This Authority notes that the DGAP has correctly considered the value at Sl. No. 5 of Table B above as Rs. 27,98,05,928/- as post-GST revenue. This amount has been taken from the home buyers' list submitted by the Respondent to the DGAP at the time of investigation.

Under the provisions of Section 13 of the CGST Act, 2017 read with Section 15(1) and 31(2) of the CGST Act, 2017, the demand raised has been considered as the value of taxable supply of service in the instant case.

Therefore, as per the home buyers' list furnished by the Respondent, the actual amount raised in post-GST regime was Rs.27,98,05,928/- only. The DGAP has considered the value of revenue on actual basis not on accrual basis since profiteering has to be calculated on the basis of money actually received by the Respondent. Hence, the above plea of the Respondent is not maintainable.

16. The Respondent has referred to Table-C of the DGAP's Report and submitted that the amount at Sl. No. 6 included the value which was pre-GST, post-GST and also post obtaining completion certificate. He has also stated that Sl. No. 7 has only reduced the flats which were booked after completion certificate.

It is the Respondent's claim that, the flats booked post-GST were not affected by anti-profiteering provision since the price would be based on market consideration prevailing during that point of time and also taking into consideration the revised costs of the project net of GST credits.

This Authority has considered this submission and finds no merit in it. This Authority finds that, the amount pertaining to the flats booked post GST prior to obtaining completion certificate, were required to be considered as such home buyers were also eligible to get their due benefit of the ITC from the Respondent.

The amount at Sl. No. 6 of the Table-C of the DGAP's Report was amount raised in post-GST period only which was exclusive of amounts pertaining to the pre-GST period.

However, the amounts pertaining to the flats booked after obtaining completion certificate did not attract GST in terms of Para 5 of the Schedule III of the CGST Act, 2017. Hence, the same were not included.

17. With regard to Table-C of the DGAP's Report, the Respondent has stated that amount at Sl. No. 10 was computed including the GST charged to the customers.

Since the entire amount collected was remitted to Government, even if there was excess, the same should be claimed as refund by the buyers and it could not be asked to be paid by the Respondent again as the same amount was not at all retained or benefitted.

This Authority finds that this contention raised by the Respondent is not correct as the Respondent has not only collected excess base price from the customers (which they were not required to pay due to the availability of ITC to the Respondent) but he has also compelled them to pay additional GST on such excess base price which they should not have paid.

By doing so the Respondent has defeated the very objective of both the Central as well as the State Governments which aimed to provide the benefit of ITC to the general public.

The Respondent was legally not required to collect the excess GST and therefore, he has not only violated the provisions of the CGST Act, 2017 but has also acted in contravention of the provisions of Section 171 (1) of the above Act as he has denied the benefit of ITC to his customers by charging excess GST.

Had the Respondent not charged the excess GST, the customers would have paid less price while purchasing the flats from the Respondent and hence the above amount has rightly been included in the profiteered amount as it denotes the amount of benefit denied by the Respondent to his recipients. Therefore, this Authority finds that the above contention of the Respondent is untenable and hence it cannot be accepted.

18. With respect to the submission of the Respondent regarding land, the Authority finds that in the present case, the Respondent has raised invoice to his home buyers which included the consolidated demand of the land and the construction services. No separate demand for the land in the invoice has been issued by the Respondent to his home buyers. The Authority finds that, if the Respondent would have issued separate invoice demanding the cost of land, the amount of GST charged would have been 18% and not 12%. The Authority finds that, had the Respondent excluded the land value from the demand raised to his buyers, the value of land would have been excluded from the purview of profiteering. Therefore, the Authority finds that the facts of the cases relied upon by the Respondent are different from the present case. Hence, the Authority finds that this contention of the Respondent regarding exclusion of land value being untenable cannot be accepted.
19. Hence, as per our findings above, the Authority finds no reason to differ from the above detailed computation of profiteering in the DGAP's Report or the methodology adopted. Hence, the Authority holds that, the ITC as a percentage of the turnover that was available to the Respondent during the pre-GST period (April-2016 to June-2017) was 3.71% and during the post-GST period (July-2017 to September-2019), it was 8.76%. This confirms that, post-GST, the Respondent has been benefited from additional ITC to the tune of 5.05% (8.76%-3.71%) of his turnover and the same was required to be passed on to the customers/flat buyers/recipients. The DGAP has calculated the amount of ITC benefit to be passed on to all the customers/

flat buyers/ recipients as Rs. 1,07,67,330/- for the project 'MJR Clique Hydra' which was availed by the Respondent the details of which are mentioned in Table- C supra.

20. For the reasons mentioned above, the Authority determines the profiteered amount for the period from 01.07.2017 to 30.09.2019, in the instant case, as Rs. 1,07,67,330/- for the project 'MJR Clique Hydra'. This profiteered amount of Rs. 1,07,67,330/- includes GST on the base profiteered amount of Rs. 96,13,687/-. The homebuyer/customer /recipient and unit No. wise break-up of this amount as given in Annexure-13 of the DGAP Report is accepted. This amount is inclusive of Rs. 1,03,453/- (including GST on the base amount of Rs. 92,369/-) which is the profiteered amount in respect of the Applicant No. 1, mentioned at serial No. 108 of Annexure-13 of the said Report.
21. For the reasons mentioned above, the Authority determines the profiteered amount for the period from 01.07.2017 to 30.09.2019, in the instant case, as Rs. 1,07,67,330/- for the project 'MJR Clique Hydra'. This profiteered amount of Rs. 1,07,67,330/- includes GST on the base profiteered amount of Rs. 96,13,687/-. The homebuyer/customer /recipient and unit No. wise break-up of this amount as given in Annexure-13 of the DGAP Report is accepted. This amount is inclusive of Rs. 1,03,453/- (including GST on the base amount of Rs. 92,369/-) which is the profiteered amount in respect of the Applicant No. 1, mentioned at serial No. 108 of Annexure-13 of the said Report.
22. This Authority under Rule 133 (3) (a) of the CGST Rules, 2017 orders that the Respondent shall reduce the prices to be realized from the buyers of the customers/flat buyers/recipients commensurate with the benefit of ITC received by him as has been detailed above.
23. The Respondent is also liable to pay interest to all customers/ flat buyers/ recipients, as prescribed and applicable on the entire amount profiteered, i.e. Rs. 1,07,67,330/- for the project 'MJR Clique Hydra'. Hence the Respondent is directed to also pass on interest @18% to the customers/ flat buyers/ recipients on the entire amount

- profiteered, starting from the date from which the above amount was profiteered till the date of passing on payment of the profiteered amount, as per the provisions of Rule 133 (3) (b) of the CGST Rules 2017.
24. A complete list of eligible customers/ flat buyers/ recipients in respect of the project 'MJR Clique Hydra' of the Respondent with the details of amount of benefit of ITC to be passed on to each of them (along with interest @ 18% as prescribed), is attached with this Order as Annexure-A.
25. The Authority also order that the profiteered amount of Rs. 1,07,67,330/- for the project 'MJR Clique Hydra', along with the interest @ 18% from the date of receiving of the profiteered amount from the customers/ flat buyers/ recipients till the date of passing the benefit of ITC, shall be paid/passed on by the Respondent within a period of 3 months from the date of this Order failing which it shall be recovered as per the provisions of the CGST Act, 2017. N
26. It is also evident from the above narration of facts that the Respondent has denied benefit of ITC to the customers/ flat buyers/ recipients in his project 'MJR Clique Hydra' in contravention of the provisions of Section 171 (1) of the CGST Act, 2017 and has committed an offence under Section 171 (3A) of the above Act. However, perusal of the provisions of Section 171 (3A), under which liability for penalty arises for the above violation, shows that it has been inserted in the CGST Act, 2017 w.e.f. 01.01.2020 vide Section 112 of the Finance Act, 2019 and it was not in operation during the period from 01.07.2017 to 30.09.2019 when the Respondent had committed the above violation and hence, the penalty prescribed under Section 171 (3A) cannot be imposed on the Respondent retrospectively for the said period.
27. Further, on perusal of the DGAP's Report and Annexures thereto, this Authority observes that the Respondent, vide his letter 03.12.2019 submitted by him before the DGAP, has admitted that he had been executing three other projects namely MJR Platina, MJR Pearl and MJR Clique Hercules under the same registration in Bengaluru in respect of which the DGAP has

not conducted any investigation to ascertain whether the Respondent is liable to pass on the benefit of ITC to the recipients of these projects or not. Since the execution of the above projects has been admitted by the Respondent himself, therefore, there are sufficient reasons to believe that the Respondent may be liable to pass on the above benefits as per the provisions of Section 171 (1). Further, the Respondent also has a single GST registration and is maintaining a joint ITC Register and is availing ITC on all the projects which he is executing from a common pool of ITC, to discharge his GST output liability on these projects through the combined GSTR-3B Returns.

Therefore, all the projects on which the Respondent is availing ITC from the common pool are required to be investigated to determine whether he has passed on the benefit of ITC to the buyers of each project, which is being executed by him. Accordingly, The Authority, as per the Rule 133 (5) (a) of the CGST Rules, 2017, directs the DGAP to investigate all the other projects of the Respondent including those specifically mentioned above, for violation of the provisions of Section 171 of the CGST Act, 2017 and submit his Report as per the provisions of Rule 133 (5) (b) of the CGST Rules, 2017, as there may be a possibility of profiteering with respect to their other projects also.

28. The concerned jurisdictional CGST/SGST Commissioner is also directed to ensure compliance of this Order. It may be ensured that the benefit of ITC is passed on to each customer/ flat buyer/ recipient as per this Order along with interest @18% as prescribed. In this regard an advertisement of appropriate size (large enough to be noticed by the reader) may also be published in minimum of two local Newspapers/vernacular press in Hindi/English/local language with the details i.e. Name of builder (Respondent) - M/s MJR Builders Pvt. Ltd., Project- "MJR Clique Hydra", Location- Bengaluru, Karnataka and profited amount of Rs. 1,07,67,330/- so that the concerned customers/ flat buyers/ recipients can claim the benefit of ITC if not passed on. Customers/ flat buyers/ recipients 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 responsible for compliance of the NAA's order may also be advertised through the said advertisement.

29. The concerned jurisdictional CGST/SGST Commissioner shall also submit a Report regarding compliance of this order to the Authority and the DGAP within a period of 4 months from the date of this Order.
30. The DGAP is also directed to monitor the compliance of the Order by the concerned jurisdictional CGST/SGST Commissioner.
31. Further, the Hon'ble Supreme Court, vide its Order dated 23.03.2020 in Suo moto Writ Petition (C) No. 3/2020, while taking suo moto cognizance of the situation arising on account of Covid-19 pandemic, has extended the period of limitation prescribed under general law of limitation or any other special laws (both Central and State) including those prescribed under Rule 133(1) of the CGST Rules, 2017, as is clear from the said Order which states as follows:-

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

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

"The Order dated 23.03.2020 is restored and in continuation of the subsequent Orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings."

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

32. A copy of this order be supplied to all the parties and file of the case be consigned after completion. A copy each of this order be sent, free of cost, to the Applicant No. 1, the DGAP, the Respondent, Commissioners CGST/SGST Karnataka, the Principal Secretary

(Town and Country Planning), Government of Karnataka as well as Karnataka RERA for necessary action.


Annexed: Annexure A in Pages 1 to 4

Sd/-
(Amand Shah)
Technical Member &
Chairman

Sd/-
(Pramod Kumar Singh)
Technical Member

Sd/-
(Hitesh Shah)
Technical Member

Certified Copy


(Dinesh Meena)
Secretary, NAA



F. No. 22011/NAA/161/MJR/2020 | 7699 - 7706
Copy To:-

1. M/s M J R Builders Pvt. Ltd., 54, 2nd Floor, 17th Cross, 12th Main, Sector-6, HSR Layout, Bengaluru-560102.
2. Ms Vinutha Prahlad, 61/22, 5th Cross N R Colony, Bengaluru, Karnataka-560019,
3. Directorate General of Anti-Profiteering, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, New Delhi-110001.
4. The Commissioner of State Tax, First Main Road, Gandhinagar, Bangalore-560009.
5. The Pr. Chief Commissioner, CGST, Bengaluru Zone, C.R. Building, Queen's Road, Shivaji Nagar, Bengaluru, Karnataka-560001.
6. The Director of Town and Country Planning, Government of Karnataka, No 4, M. S. Building, 4th Floor, 6th Block, Near-Vidhana Soudha, Ambedkar Veedhi, Bengaluru, Karnataka 560001.
7. The Chairman, Karnataka Real Estate Regulatory Authority, Real Estate Regulatory Authority Karnataka, 2nd floor, Silver Jubli Block, Unity Building, CSI Compound, 3rd Cross, Misson Road, Bengaluru, Karnataka 560027.
8. Guard File

ANNEXURE-A
LIST OF HOMEBUYERS OF THE PROJECT "MJR CLIQUE HYDRA"

Sl. No	Name of Customer	Unit No.	Amount of ITC benefit to be passed on (Amount in Rs.)
(1)	(2)	(3)	(4)
1	Mr. K R Jeyakarna	A101	10,714
2	Mr. Deepak Appasab Patil	A105	79,356
3	Mr. Sreedhar S	A201	2,35,219
4	Mr. Sushant Saraf	A205	10,558
5	Ms. Maitri Roy Chowdhury	A301	2,09,727
6	Mr. Manish Ranjan	A303	59,146
7	Mr. Karthick Rajendran	A304	0
8	Mr. Neeraj Kumar Roy	A305	10,257
9	Mr. Pankaj K	A401	0
10	Mr. Ritwik Prakash	A402	11,056
11	Mrs. Aswathi K	A404	10,981
12	Mr. Himanshu Kandpal	A405	0
13	Mrs. Shantha Achuth B	A501	10,857
14	Mr. Kumar Ashish	A502	2,19,719
15	Mr. Devesh Kumar Batra	A503	2,30,700
16	Mr. Dinesh Kumar Talaicha	A504	10,935
17	Mr. Neeraj Choubey	A505	10,499
18	Mr. Shijin Jayaprakash	A601	0
19	Mr. Tapash Kumar Dey	A602	0
20	Ms. Savitha U Kamath	A604	2,28,843
21	Mr. Tarun Agarwal	A605	9,630
22	Mr. Karthi Murvgan	A701	11,313
23	Mr. Pravish E N	A702	11,263
24	Mr. Sooraj	A703	2,34,675
25	Mr. Uday Kumar Soman	A704	0
26	Mr. Partha Pratim Das	A705	2,34,890
27	Mr. Raza Bakshi	A801	11,046
28	Mr. Vivek Vhatkar	A804	11,761
29	Mr. Manhar Sood	A805	10,634
30	Mrs. Kinnery Sinha	A901	3,229
31	Ms. Supriya Sanjay Bhosale	A904	86,573
32	Mr. Srikant Das	A905	11,116
33	Mr. Nakul Gupta	A1001	11,820
34	Mr. Namit Mishra	A1002	11,792
35	Mr. Sharad Vasudev	A1004	0
36	Mr. Bhabani Sankar Senapati	A1005	11,692
37	Mr. Kushal Bhola	A1101	1,93,805
38	Mr. Arunagaraj Gowda	A1104	2,11,034
39	Mr. Mohit Sangal	A1105	11,605
40	Mr. Vignesh Subramaniam K	A1201	2,38,546
41	Mr. Rajath Rai P	A1204	0
42	Mr. Amardeep V	A1205	12,594
43	Mr. P Sunil Kumar Patnaik	A1305	34,453
44	Mr. Vinay Kumar Srivastava	B104	2,74,827
45	Mr. Sanjeet Saurabh	B201	2,18,695
46	Mr. Sathish Vasu	B204	12,640
47	Mr. Sandeep C S	B301	12,030
48	Mr. Vivek Narayanan	B302	0
49	Mr. Sachin S Parvatikar	B303	14,772
50	Mr. B Vijayaraghavan	B304	13,250
51	Mr. Ajithkumar P V	B401	15,218
52	Mrs. Neetha Dinesh Kamath	B402	12,163
53	Mrs. Sneha Das Gupta	B403	12,245
54	Mr. Padma Raja P	B404	13,435
55	Mr. Amit Saurabh	B501	11,730
56	Mr. Sunayana Menon	B502	25,844

57	Mr. Harish R	B503	9,774
58	Mr. Kiran Kumar M	B504	18,677
59	Mrs. Divya Singh	B601	11,813
60	Mr. Prashant Tandon	B602	12,013
61	Mr. Nitish Narayanan	B603	12,000
62	Mr. Srinivasa Rao	B604	13,984
63	Mrs. Radhika Velaparathi	B701	2,50,489
64	Mrs. Amrita Kumari	B703	17,782
65	Mr. V Sanjeev Raman	B704	13,505
66	Mr. Milan Satpathy	B801	9,153
67	Mr. Abhishek Ghutak	B802	0
68	Mr. Arun Chandra Pandey	B803	11,434
69	Mr. Prashant Singh	B804	14,365
70	Mr. Nagarjuna Reddy K R	B901	55,860
71	Ms. Lipi Dash	B902	12,363
72	Mr. Pooja Thakur	B903	12,082
73	Mrs. Shriya Mahato	B904	13,968
74	Mr. Santhosh Kumar K	B1001	12,496
75	Mr. Jithin Raj V M	B1002	11,991
76	Mr. Sayooj Venugopal A	B1003	21,987
77	Mrs. Kalpana Jain	B1004	12,699
78	Mrs. Chaitanya Sri laxmi Medam	B1101	22,864
79	Mr. Arun Kumar Upadhyaya	B1102	2,55,575
80	Mr. Gaurav Agnihotri	B1103	2,54,573
81	Mr. Navneet Kumar	B1104	16,484
82	Ms. Anushree Vasudev	B1201	25,566
83	Mrs. Sushree Surasmita	B1202	0
84	Mr. Manish Kabra	B1203	0
85	Mr. Jose Mathew Manimala	B1204	14,027
86	Ms. Subika Singh	B1301	2,52,486
87	Mr. Ullas Babu PA	B1303	0
88	Mr. Baleshware Prasad	B1304	43,326
89	Mr. Puneet Negi	B1404	0
90	Mr. Ravi Kumar D E	C201	2,40,595
91	Mr. Saumi Kurian	C203	79,802
92	Mr. Sandeep Wamanrao Gaikwad	C204	11,235
93	Mr. Prakash Sewda	C301	11,597
94	Mr. Gaurav Kant	C303	17,719
95	Mr. Abhijit Dey	C304	37,324
96	Mrs. Kirti Roy	C401	23,294
97	Mr. Prateek Kumar Saxena	C402	12,263
98	Mr. Pankaj Mishra	C403	56,268
99	Mrs. Sreena K	C404	13,195
100	Mr. Deepankar Gaur	C501	11,946
101	Mr. Anil Kumar Tiwari	C502	76,977
102	Mr. Suneet Kumar	C503	11,067
103	Mr. Nithin B	C504	24,839
104	Mrs. Pooja Biyani	C601	9,753
105	Mr. Gudla Pradeep	C602	12,246
106	Mrs. Devarati Gupta	C603	12,558
107	Mr. Somesh Purohit	C604	14,382
108	Mrs. Vinuta Prahlad	C701	1,03,453
109	Mr. Jayakrishnan M	C702	0
110	Mr. Sachin Kediya	C703	0
111	Siddarth Shankar	C704	14,831
112	Mr. Kritesh Tripathi	C801	11,031
113	Mr. Robin Jain	C803	0
114	Mr. Bharat Kumar	C804	4,201
115	Mr. Deepak Kumar	C901	2,58,019
116	Mr. Vimal Dhawan	C902	2,39,887
117	Ms. Divya Mishra	C903	1,50,916
118	Mr. Devendra Mishra	C904	0
119	Mr. Rishi Kant Gupta	C1001	1,82,622
120	Mr. Pradeep Kumar Shetty	C1002	2,66,562

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121	Mr. Jahn Davis Thazhath	C1003	0
122	Mr. Ravi Shankar	C1004	13,750
123	Mr. Sudipto Paul	C1101	13,112
124	Mr. Sreekanth P S	C1103	0
125	Mr. Vikas Srivastava	C1104	13,790
126	Mr. Bhautik Karkar	C1201	12,829
127	Mr. Anil Gopal Kotian	C1202	0
128	Mr. Vishwanath Porwal	C1203	0
129	Mr. Siddharth Hazarika	C1204	15,060
130	Mr. Priyabrata Dash	C1301	19,637
131	Mrs. Kanika	C1302	0
132	Mr. Vinay Menon S	C1303	0
133	Mr. Umang Trivedi	C1304	0
134	Mrs. Jeyanthi P	C1401	0
135	Mr. Ravi Kumar D E	C1404	0
136	Ms. Ramya Rajan	D201	0
137	Mr. Rajiv Sonowal	D204	1,01,129
138	Mr. Amarjyoti Borah	D301	2,55,585
139	Mr. Bikram Kumar Mallick	D303	23,902
140	Mr. Shankar B	D304	28,302
141	Mr. Vijay Kumar P V	D401	12,197
142	Mr. Pronce Jenifer	D402	0
143	Mr. Debojyoti Hazra	D403	69,414
144	Mr. Sarad Patel	D404	69,894
145	Mr. Chetan R Kumar	D501	24,282
146	Mr. Mohamed Abdul Sattar	D503	24,891
147	Mr. Animesh Kumar Jha	D504	27,946
148	Mr. Narayan C	D601	0
149	Mrs. Kauser Shahla	D603	15,100
150	Mrs. Mahzeeba Afreen	D604	25,727
151	Mr. Bharat C	D701	25,332
152	Mr. Deepesh Jain	D703	21,328
153	Mrs. Pujarini Mitra	D704	26,945
154	Mr. Seetesh Tripathi	D801	22,062
155	Mr. Vimal	D803	24,360
156	Mr. Girish Radhakrishnan N	D804	27,980
157	Mr. Anshul Jain	D901	25,861
158	Mr. Rajesh Kumar Sinha	D903	51,411
159	Mr. Anurag Mathur	D904	29,036
160	Mr. P Sreenivasa Reddy	D1001	20,935
161	Mr. Mahesh Francis Dsouza	D1002	16,360
162	Mr. Suprateek	D1003	1,69,072
163	Mr. Sondeep Banerjee	D1004	14,027
164	Mr. Vijindas P T	D1101	2,44,843
165	Mr. Shah Nishant Jain	D1103	12,163
166	Mr. Rajdeep Banerjee	D1104	39,366
167	Ms. Sanjana N	D1201	2,40,595
168	Mr. Lokesh Sharma	D1203	26,003
169	Mr. Mohit Singh	D1204	14,360
170	Mr. Saikat Mitra	D1301	2,48,532
171	Ms. Gopa Mitra	D1303	2,52,269
172	Ms. K Kiruthikaa	D1304	29,153
173	Mr. Satyasheel Mishra	D1404	28,905
174	Mr. Praveen Ashok Kamble	E105	30,048
175	Mrs. Pinki Kumari	E201	1,33,660
176	Mr. Prabhav Bhargava	E203	30,853
177	Ms. Saloni Phutela	E205	30,958
178	Mr. Sabuj Dutta	E301	32,442
179	Ms. Vibha Dhawan	E303	30,476
180	Mr. Nitish Sodhi	E304	30,469
181	Mr. Praful Kumar Pankaj	E305	30,632
182	Mrs. Parineeta Jangde	E401	31,245
183	Mr. Raghav Chandra	E403	29,753
184	Mr. Subhasis Bhattacharjee	E404	32,532

185	Mr. Srinivas Martha	E405	29,611
186	Ms. Divya B	E501	31,410
187	Mr. Gaurav Jain	E503	30,141
188	Mr. Arindam Mitra	E504	0
189	Mrs. Savitha T	E601	30,897
190	Mr. Khageswar Nitin Kumar Sethy	E603	21,181
191	Mr. Rakshit Raikar	E701	33,475
192	Mr. Shamsher Bahadur Singh	E703	28,199
193	Mr. Manoj Prabhakar N	E801	28,292
194	Ms. Madhusmita Panda	E803	31,890
195	Mr. Durjoy Basu Ray	E804	32,203
196	Mrs. Ritika Yajnik	E901	32,184
197	Mr. Sanket Vasant Bhangale	E903	0
198	Mrs. Madhuri Ghosh	E1001	33,095
199	Mr. Vikram Kshirsagar	E1003	2,25,243
200	Mr. Nitin S Khapare	E1101	2,34,490
201	Mrs. Garima Mehta	E1103	0
202	Mr. Sanjay Karmakar	E1203	4,23,706
	TOTAL ITC BENEFIT TO BE PASSED		1,07,67,330

