

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

Case No. : 15/2022
Date of Institution : 23.12.2021
Date of Order : 13.05.2022

In the matter of:

Director-General of Anti-Profiteering, Indirect Taxes & Customs,
2nd Floor, Bhai Vir Singh Sahityav Sadan, Bhai Vir Singh Marg,
Gole Market, New Delhi-110001.

Applicant

Versus

M/s DLF Limited, DLF Gateway Tower, R Block, DLF City, Phase-
III, Gurugram, Haryana-122002.

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.
2. None for the Respondent.


ORDER

1. The present Report dated 16.12.2021 has been received from the Director-General of Anti-Profiteering (DGAP) after a detailed investigation in accordance with Rule 129(6) of the Central Goods & Service Tax Rules, 2017. The brief facts of the present case are that the Sh. Sudhir Jain had filed an application under Rule 128 of the CGST Rules, 2017 alleging profiteering by the Respondent in respect of purchase of flat no. J-062, Tower-J, 6th Floor in the Respondent's Project "The Sky Court", in the DLF Garden City, Sector-86, Gurugram. He had also alleged that he had purchased the flat when the completion certificate was already received by the Respondent and possession was already given to many residents. Since, the sale of flats after issuance of completion certificate did not attract GST, he had alleged that the Respondent had charged GST @ 18 % on the Preferential Location Charges (PLC). The Haryana State Screening Committee on Anti-Profiteering had examined the said application and forwarded it with its recommendation, to the Standing Committee on Anti-Profiteering for further action, in terms of Rule 128 of the Rules. Further the aforesaid reference was examined by the Standing Committee on Anti-Profiteering in its

meeting, the Minutes of which were received in the DGAP, whereby it was decided to forward the same to the DGAP, to conduct a detailed investigation in the matter. Sh. Sudhir Jain had submitted a demand letter along with his application.


2. This Authority went through the aforesaid Investigation Report dated 31.08.2020 submitted by the DGAP and passed an Interim Order No. 38/2020 dated 11.12.2020 and made the following observations:-

"25. It has also also been observed from the submissions of the Respondent that he is executing another project viz. "The Ultima" in the same "DLF Garden City", situated in Gurugram, Haryana 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 this project or not. Since the execution of the above project has been admitted by the Respondent himself therefore, there are sufficient reasons to believe that the Respondent is apparently liable to pass on the above benefit as per the provisions of Section 171 (1). Further, the Respondent also has a single GST registration and is maintaining 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 are being executed by him. Accordingly, this Authority as per the provisions of Section 171(2) of the above Act after taking suo moto cognizance, directs the DGAP to conduct investigation in respect of the above project and submit Report to this Authority for determination whether the Respondent is liable to pass on the benefit of ITC in respect of the above project to the buyers or not as per the provisions of Section 171(1) of the above Act.”

- “26. Due to the above reasons the Report dated 31.08.2020 furnished by the DGAP cannot be accepted. Therefore, in terms of the provisions of Rule 133(4) and Section 171(2) of the CGST Act, 2017 the DGAP is directed to further investigate the present case on the above issues and submit his Report under Rule 129(6) of the above Rules. The Respondent is directed to extend all assistance to the DGAP and furnish him necessary documents or information as required during the course of the investigation.”

3. Therefore, the DGAP has submitted the present Report under Section 171(2) of the CGST Act, 2017 covering the issues raised by this Authority in Para 25 of the above said I.O. dated 11.12.2020.
4. The DGAP has submitted that as per the directions of this Authority vide aforesaid Order dated 11.12.2020, all the projects on which the Respondent was availing ITC from the common pool were required to be investigated to determine whether he had passed on the benefit of ITC to the buyers of each project, which were being executed by the Respondent.
5. Accordingly, the DGAP has issued a notice dated 23.09.2021 calling for information in respect of all the projects covered under the same GST Registration No. of the Respondent to determine whether the benefit of ITC had been passed on by him to the recipients in respect of construction service supplied by him for all the projects and the Respondent was further requested to furnish the fresh requisite information/data for the period up to November, 2020. 
6. It has also been claimed by the DGAP that the period covered by the current investigation was from 01.07.2017 to 30.11.2020. Though the Respondent claimed that the Occupation Certificate in all three projects were received from the competent authority prior to 30.11.2020 but the Respondent, vide his submission dated 12.12.2021, had confirmed that in respect of payment plan, the customers have opted for payment plans as per their convenience and same will be mixed. Therefore, since the occupation certificates have been received in respect of all the 3 projects by the

Respondent but the nature of agreements as claimed by the Respondent were linked with construction plan as well as payment plan i.e., mixed, the investigation has been carried out up to the period from 01.07.2017 to 30.11.2020 and not up to the date of receipt of occupation certificate in respective projects.

7. The DGAP has further mentioned that the present investigation was to be completed by 29.06.2021. However, due to force majeure caused in the light of Covid-19 pandemic, the investigation could not be completed on or before the above date. Further, Hon'ble Supreme Court of India passed an Order dated 08.03.2021 in Suo Moto Writ Petition (Civil) No. 3 of 2020, wherein, it was stated that "in cases where the limitation would have expired during the period between 15.03.2020 till 14.03.2021, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 15.03.2021. In the event the actual balance period of limitation remaining, with effect from 15.03.2021, is greater than 90 days, that longer period shall apply". The above relief has been extended and the period from 14.03.2021 till further orders has also been excluded in computing the limitation period as per the Hon'ble Supreme Court's Order dated 27.04.2021 passed in Miscellaneous Application No. 665/2021 in SMWP(C) No. 3/2020. Further, the above relief has been further extended and the period from 02.10.2021 shall have limitation period of 90 days from 03.10.2021 as per the Hon'ble Supreme Court's Order dated 23.09.2021 passed in Miscellaneous Application No. 665/2021 in

SMW(C) No. 3/2020. Therefore, the present Report has been filed during the period of limitation.

8. The Respondent has responded to the DGAP vide letter dated 23.09.2021 and subsequent reminders, the Noticee submitted his replies vide letters/e-mails dated 05.10.2021, 12.10.2021, 02.11.2021, 15.11.2021, 23.11.2021, 07.12.2021, 10.12.2021, 11.12.2021, 12.12.2021, 13.12.2021, 14.12.2021 and has submitted:-

a) That he has filed a writ petition under Article 226 and 227 of the Constitution of India before the High Court of Delhi (numbered as W.P (C) No.12329 of 2021) *inter alia* against the DGAP and the National Anti-Profiteering Authority (NAA) seeking amongst others an appropriate writ, order or direction quashing the Order dated 11.12.2020 passed by the NAA.

b) The said Writ Petition came up for hearing on 29.10.2021 before the Hon'ble High Court, when the Court was pleased to issue notice on the aforesaid Writ Petition and the accompanying application for interim relief. The Writ Petition has been re-notified by the Hon'ble Court for further hearing to 06.12.2021.

c) That the Respondent was incorporated in the year 1963 and is one of the Largest Real Estate Developers of the country. He has various commercial and residential projects in the state of Haryana, Delhi, and Uttar Pradesh etc. His operations spanned all aspects of real estate, from the identification and

acquisition of land, to planning, execution, construction and marketing of projects. He is also engaged with other services such as leasing, maintenance etc. The development business of the Respondent is involved in the sale of residential spaces, select commercial offices and commercial complexes.

- d) The main projects executed by the Respondent from 01.07.2017 along with the Occupancy Certificates (OC) for these projects were received is as follows :-

S.No.	Projects	Date of OC
1	The Camellias	27.07.2017
2	The Sky Court	17.07.2017
3	The Crest	24.07.2017
4	The Ultima (Tower-E,H,J,K,L & EWS)	11.06.2018
5	The Ultima (Tower-A,B,N,Q,R & Shops)	05.02.2019

- e) That the Respondent has reported turnover on account of other activities i.e. Rent, Maintenance, Scrap Sale, Assets sale and Other Miscellaneous activities. Further, he is maintaining project wise accounting including ITC for all projects and ITC is being availed accordingly. None of the above projects namely "The Camellias", "The Sky Court", "The Crest" & "The Ultima"

are registered under RERA, since the same do not qualify for registration criteria under RERA.

- f) That the Respondent has only one GST registration for the state during the migration from VAT/Services Tax regime to GST regime hence there is only one Electronic Credit Ledger. He has kept project wise record/accounting of all inputs and input services and output services/ supplies etc. and all the purchase orders, work orders, other orders as well as demand letters to property buyers are being issued project wise only. Project wise details are compiled/consolidated GSTIN wise i.e., state wise to file the monthly GST return in form GSTR-1 & GSTR-3B.
- g) That the project wise record of all inputs/outputs is necessarily required to be kept for the purpose of reversal under Rule 42 since all the projects are having different OC dates, different areas and the reversal is mandatorily required to be made project wise only on the basis of area sold vs. area unsold on the date of receiving of OC. The reversal cannot be made and would be impossible in absence of project wise record/accounting. Further, for the post implementation period of GST the Respondent submitted he had already passed the available benefit to the property buyers on account of reduction in cost due to increase in tax credits or for any other reasons. Such benefit can be passed project wise only and has been passed accordingly.

- h) That only Ultima Phase-2 project was registered under RERA and there was no agreement/registry between the land owners and the developer for these three projects namely "The Camellias", "The Crest" & "The Ultima".
 - i) That there are down payment plans, construction linked payment plans, periodic payment plans etc. and the customers have opted for payment plans as per their convenience and the same are mixed.
9. Further the DGAP has reported that the Respondent vide the aforementioned letters/e-mails had submitted the following documents/information:
- a. GSTR-1 & GSTR-3B returns for the period from July, 2017 to November, 2020. ✓
 - b. GSTR-9 for the year 2017-18, 2018-19 and 2019-20.
 - c. Trans-1 for the period July, 2017 to December, 2017.
 - d. VAT and ST-3 Returns for the period April, 2016 to June, 2017.
 - e. Details of applicable tax rates, Pre-GST & Post-GST.
 - f. Balance sheet for the FY 2016-17, 2018-19 & 2019-20.
 - g. Cenvat/Input Tax Register for the F.Y 2016 -17, April, 2017-June, 2017, July, 2017-March, 2018, 2018-19, 2019-20 and April 2020 to November, 2020.
 - h. List of all Construction projects of the Noticee in the State of Haryana other than "The Sky Court" on which the Noticee is availing ITC from common pool, along with RERA

Registration No's, that is, all the projects covered under GSTN:06AAACD3494N1ZC.

- i. Copy of demand letters/Sale agreement/contract issued to the home buyers for Ultima, Crest & Camellias project. (Sample basis).
- j. Copy of the RERA Certificate for the project Ultima Phase-II.
- k. Tower-wise status of all projects as on 30-11-2020 having sold & unsold units with respective area in sq. ft. along with the copies of occupancy certificates.
- l. Details of VAT, Service Tax, ITC of VAT, Cenvat Credit for the period April, 2016 to June, 2017 and output GST and ITC of GST for the period July, 2017 to November, 2020.
- m. Project wise list of all homebuyers of the project "Camellias, Crest & Ultima".

10. The Respondent has sought confidentiality of all the details/information submitted by him under Rule 130 of the CGST Rules, 2017.

11. The DGAP in his report has stated that as per the directions of this Authority vide I.O. No. 38/2020 dt. 11.12.2020, fresh investigation in respect of all the three projects of the Respondent has been initiated. Accordingly, during the investigation the Respondent was asked to submit the information and data up to 30.11.2020, which the Respondent submitted. Hence the case has been investigated again on the basis of fresh information/data submitted by the Noticee. The main issues for determination were:

- (i) Whether there was benefit of reduction in the rate of tax or ITC on the supply of construction service by the Respondent, on implementation of GST w.e.f. 01.07.2017 and if so,
- (ii) Whether the Respondent has passed on such benefit to the recipients of all three projects by way of commensurate reduction in price, in terms of Section 171 of the CGST Act, 2017 and;
- (iii) To comply with the directions contained in the Interim Order No. 38/2020 dated 11.12.2020 of this Authority.

12. The DGAP has further reported that in para 5 of Schedule-III of the CGST Act, 2017 (Activities or Transactions which shall be treated neither as a supply of goods nor a supply of services) which reads as *"Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building"*. Further, clause (b) of Paragraph 5 of Schedule II of the CGST Act, 2017 reads as *"(b) construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier"*. Thus, the ITC pertaining to the residential units and commercial shops which were under construction but not sold was provisional ITC which might have been required to be reversed by the Respondent, if such units remained unsold at the time of issue of the completion certificate, in terms of

Section 17(2) & Section 17(3) of the CGST Act, 2017, which read as under:

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

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

Therefore, the ITC pertaining to the unsold units might not fall within the ambit of the investigation and the Respondent was required to recalibrate the selling price of such units to be sold to the prospective buyers by considering the net benefit of additional ITC available to him post-GST.

13. Further the DGAP has submitted that prior to 01.07.2017, i.e., before the GST was introduced, the Respondent was eligible to avail CENVAT of Service Tax paid on input services only (no credit was available in respect of Central Excise Duty paid on the inputs) and also Input Tax Credit (ITC) of VAT paid on inputs was not available to the Respondent as he was paying VAT under composition scheme of

the Haryana VAT. Further, post-GST, the Respondent could avail input tax credit of GST paid on all the inputs and the input services including the sub-contracts. From the project-wise data submitted by the Respondent covering the period April, 2016 to November, 2020, details of the input tax credit availed by him, his turnover from the project "**The Camellias**", and the ratios of input tax credits to turnovers, during the pre-GST (April, 2016 to June, 2017) and post-GST (July, 2017 to November, 2020) periods, have been furnished by the DGAP in Table-A below:-

Table-A – Project "The Camellias" (Amount in Rs.)			
Sr.No.	Particulars	April,2016 to June,2017 (Pre-GST)	July, 2017 to November, 2020 (Post-GST)
1	CENVAT of Service Tax Paid on Input Services (A)	38,25,32,956	-
2	Input Tax Credit of VAT Paid on Purchase of Inputs (B)	0	0
3	Total CENVAT/VAT/Input Tax Credit Available (C=A+B)	0	53,22,44,630
4	Input Tax Credit of GST Available (D)	38,25,32,956	53,22,44,630
5	Total Turnover from Residential Area (E)	20,85,75,99,622	5,48,89,78,351
6	Total saleable area in Sq. Ft. (F)	35,52,341	35,52,341
7	Sold Area relevant to turnover in Sq Ft. (G)	12,89,161	6,74,979
8	ITC proportionate to Sold Area (H)= (C or D)* G/F)	13,88,22,981	10,11,31,605
9	Ratio of Cenvat/Input Tax Credit to Turnover (I=H/E*100)	0.67%	1.84%

From the above **Table-'A'**, it was observed that the ITC as a percentage of the turnover that was available to the Respondent in respect of the project "**The Camellias**" during the pre-GST period (April, 2016 to June, 2017) was 0.67%, and during the post-GST period (July, 2017 to November, 2020), it was 1.84%. Hence, post-GST, the Respondent has been benefited from additional ITC to the tune of 1.18% of the turnover in respect of the project "**The Camellias**".

14. The DGAP has further submitted that the Central Government, on the recommendation of the GST Council, had levied 18% GST on construction service, vide Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017. Since the Respondent was eligible for 1/3rd abatement on land value, the effective GST rate was 12%. Accordingly, on the basis of the figures contained in Table 'A', above, the comparative figures of the ratio of ITC availed/available to the turnover in the pre-GST and post-GST periods as well as the turnover, the recalibrated base price and the excess realization (profiteering) during the post-GST period in respect of project "**The Camellias**", has been furnished by the DGAP in Table-B below:-

Table-B – Project "The Camellias" (Amount in Rs.)			
S. No.	Particulars		
1	Period	A	July, 2017 to November, 2020
2	Output tax rate (%)	B	12.00%
4	Increase in ITC availed post-GST (%)	C= 1.84% less 0.67%	1.18%
5	<u>Analysis of Increase in ITC:</u>		
6	Total Basic Demand during July, 2017 to December, 2019	D	5,48,89,78,351
7	GST @12%	E=D*12%	65,86,77,402
8	Total demand	F=D+E	6,14,76,55,753
9	Recalibrated Basic Price	G=D*(1-C) or 98.82% of D	5,42,43,80,017
10	GST @12%	H=G*12%	65,09,25,602
11	Commensurate demand price	I=G+H	6,07,53,05,619
12	<u>Excess Collection of Demand or Profiteered Amount</u>	J=I-F	7,23,50,135

15. Similarly the details of the ITCs availed by the Respondent, his turnovers from the project "**The Crest**", and the ratios of ITC to turnovers, during the pre-GST (April, 2016 to June, 2017) and post-GST (July, 2017 to November, 2020) periods, from the project-wise data submitted by the Respondent covering the period April, 2016 to November, 2020, has been furnished by the DAP in Table-C below:-

Table-C – Project “The Crest” (Amount in Rs.)			
S.No.	Particulars	April,2016 to June,2017 (Pre-GST)	July, 2017 to November, 2020 (Post-GST)
1	CENVAT of Service Tax Paid on Input Services (A)	14,53,72,451	-
2	ITC of VAT Paid on Purchase of Inputs (B)	0	0
3	Total CENVAT/VAT/ITC Available (C=A+B)	0	28,05,61,592
4	ITC of GST Available (D)	14,53,72,451	28,05,61,592
5	Total Turnover from Residential Area (E)	2,60,97,91,448	98,29,79,749
6	Total saleable area in Sq Ft. (F)	11,36,644	11,36,644
7	Sold Area relevant to turnover in Sq Ft. (G)	5,39,606	5,73,509
8	ITC proportionate to Sold Area (H)= (C or D)* G/F)	6,90,13,558	14,51,61,120
9	Ratio of Cenvat/ITC to Turnover (I=H/E*100)	2.64%	14.40%

It is clear from the above Table ‘C’ that the ITC as a percentage of the turnover that was available to the Respondent in respect of the project “**The Crest**” during the pre-GST period (April, 2016 to June, 2017) was 2.64%, and during the post-GST period (July, 2017 to November, 2020), it was 14.40%. This clearly confirmed that post-GST, the Respondent has benefited from additional ITC to the tune of 11.76% of the turnover in respect of the project “**The Crest**”.

16. Similarly on the basis of the figures contained in Table ‘C’, above, the comparative figures of the ratios of ITCs availed/available to the turnovers in the pre-GST and post-GST periods as well as the turnovers, the recalibrated base price and the excess realization (profiteering) during the post-GST period in respect of project “**The Crest**” have been furnished by the DGAP in Table-D below:-

Table-D – Project “The Crest” (Amount in Rs.)			
S. No.	Particulars		
1	Period	A	July, 2017 to November, 2020
2	Output tax rate (%)	B	12.00%
4	Increase in ITC availed post-GST (%)	C= 14.40% less 2.64%	11.76%
5	<u>Analysis of Increase in ITC:</u>		
6	Total Basic Demand during July, 2017 to December, 2019	D	98,29,79,749
7	GST @12%	E=D*12%	11,79,57,570
8	Total demand	F=D+E	1,10,09,37,319
9	Recalibrated Basic Price	G=D*(1-C) or 88.24% of D	86,74,12,633
10	GST @12%	H=G*12%	10,40,89,516
11	Commensurate demand price	I=G+H	97,15,02,149
12	<u>Excess Collection of Demand or Profiteered Amount</u>	J=I-F	12,94,35,170

17. Similarly, the details of the ITCs availed by the Respondent, his turnovers from the project “**The Ultima**”, and the ratios of ITCs to turnovers, during the pre-GST (April, 2016 to June, 2017) and post-GST (July, 2017 to November, 2020) periods have been furnished by the DGAP in Table-E below:-

Table-E – Project “The Ultima” (Amount in Rs.)			
S.No.	Particulars	April, 2016 to June, 2017 (Pre-GST)	July, 2017 to November, 2020 (Post-GST)
1	CENVAT of Service Tax Paid on Input Services (A)	17,57,99,658	0
2	ITC of VAT Paid on Purchase of Inputs (B)	0	0
3	Total CENVAT/VAT/ITC Available (C=A+B)	17,57,99,658	0
4	ITC of GST Available (D)	0	40,35,17,830
5	Total Turnover from Residential Area (E)	2,34,91,80,023	29,21,24,530
6	Total saleable area in Sq Ft. (F)	21,80,054	21,80,054
7	Sold Area relevant to turnover in Sq Ft. (G)	7,13,003	2,75,586
8	ITC proportionate to Sold Area (H)= (C or D)* G/F)	5,74,96,596	5,10,09,684
9	Ratio of Cenvat/ITC to Turnover (I=H/E*100)	2.45%	17.46%

It is clear from the above Table ‘E’, that the ITC as a percentage of the turnover that was available to the Respondent in respect of the project “**The Ultima**” during the pre-GST period (April, 2016 to June, 2017) was 2.45% and during the post-GST period (July, 2017 to November, 2020), it was 17.46%. thus post-GST, the Respondent had been benefited from additional ITC to the tune of 15.01% of the turnover in respect of the project “**The Ultima**”.

18. Accordingly, on the basis of the figures contained in Table ‘E’ above, the comparative figures of the ratios of ITCs availed/available

to the turnovers in the pre-GST and post-GST periods as well as the turnovers, the recalibrated base price and the excess realization (profiteering) during the post-GST period in respect of project "The Ultima" have been furnished by the DGAP in Table-F below:-


Table-F – Project "The Ultima" (Amount in Rs.)			
S. No.	Particulars		
1	Period	A	July, 2017 to November, 2020
2	Output tax rate (%)	B	12.00%
4	Increase in ITC availed post-GST (%)	C = 2.45% less 17.46%	15.01%
5	<u>Analysis of Increase in ITC:</u>		
6	Total Basic Demand during July, 2017 to December, 2019	D	29,21,24,530
7	GST @12%	E=D*12%	3,50,54,944
8	Total demand	F=D+E	32,71,79,474
9	Recalibrated Basic Price	G=D*(1-C) or 84.99% of D	24,82,64,646
10	GST @12%	H=G*12%	2,97,91,758
11	Commensurate demand price	I=G+H	27,80,56,403
12	<u>Excess Collection of Demand or Profiteered Amount</u>	J=I-F	4,91,23,070

It is clear from the Table-F above that the additional ITC of 15.01% of the turnover for the project "The Ultima" should have resulted in the commensurate reduction in the base price as well as cum-tax price. Therefore, in terms of Section 171 of the CGST Act, 2017, the benefit of such additional ITC was required to be passed on to the recipients.

19. The DGAP in his report has claimed that as per the calculations explained in Tables 'B', 'D' and 'F' mentioned above, the aforesaid CENVAT/ITC availability in pre and post-GST periods and the details of the amount collected by the Respondent from the home/flats buyers in respect of the units sold by the Respondent during the period 01.07.2017 to 30.11.2020, the benefit of ITC that needed to be passed on by the Respondent to the buyers of flats comes for the projects "**The Camellias**" as Rs. 7,23,50,135/-, "**The Crest**" as Rs. 12,94,35,170/- and "**The Ultima**" as Rs. **4,91,23,070/-**. Further, the Respondent had submitted the lists of home buyers of all the above three projects and had claimed that he had passed on the benefit of ITC and mentioned the amount of benefit of ITC passed on against each home buyer of respective projects. The Respondent had claimed that benefit of ITC was passed on to the home buyers of the projects "**The Camellias**" to the extent of Rs. 6,96,08,150/-, "**The Crest**" of Rs. 4,59,47,817/- and "**The Ultima**" of Rs. 5,58,32,865/-. However, to support his claim of benefit of ITC having been passed on, the Respondent has not submitted any documentary evidence i.e., copies of cheques, copies of Credit Notes issued to home buyers, copies of Ledger Accounts of the home buyers maintained by the Respondent. Furthermore, the Respondent had not provided the email ids/phone numbers of the home buyers to enable the DGAP to verify the authenticity of the Respondent's claim from the respective home buyers. Therefore, on the basis of above, claim of the Respondent was not verifiable and thus the same had not been

appropriated against the profiteered amount as computed by the DGAP. Further, on the basis of the details of outward supplies of the construction service submitted by the Respondent, it was observed that the service has been supplied in the State of Haryana only.

20. Therefore, the DGAP has concluded that:-

a) Section 171 of the CGST Act, 2017 has been contravened by the Respondent by not passing on the benefit of additional ITC to the tune of 1.18% of the turnover for the project "**The Camellias**", which has accrued to the Respondent in the post-GST period from 01.07.2017 to 30.11.2020 and the same was required to be passed on by the Respondent to his recipients. Hence, the Respondent had realized an additional amount to the tune of **Rs. 7,23,50,135/-** (including GST) from 79 homebuyers. These 79 buyers were identifiable as per the documents provided by the Respondent, giving the names along with unit no. allotted to such buyers. 

b) The Respondent has contravened the provisions of Section 171 of the CGST Act, 2017 by not passing on the benefit of additional ITC to the tune of 11.76% of the turnover for the project "**The Crest**", which has accrued to the Respondent in the post-GST period from 01.07.2017 to 30.11.2020 and the same was required to be passed on by the Respondent to his recipients. Hence, the Respondent had realized an additional amount to the tune of **Rs. 12,94,35,170/-** (including GST) from 184 homebuyers. These 184 buyers were identifiable as per

the documents provided by the Respondent, giving the names along with unit no. allotted to such buyers.

- c) The Respondent has contravened the provisions of Section 171 of the CGST Act, 2017 by not passing on the benefit of additional ITC to the tune of 15.01% of the turnover for the project "**The Ultima**", which has accrued to the Respondent in the post-GST period from 01.07.2017 to 30.11.2020 and the same was required to be passed on by the Respondent to his recipients. Hence, the Respondent had realized an additional amount to the tune of **Rs. 4,91,23,070/-** (including GST) from 123 homebuyers. These 123 buyers were identifiable as per the documents provided by the Respondent, giving the names along with unit no. allotted to such buyers.

21. The DGAP has further reported that any reference to the Central Goods and Services Act, 2017 and Central Goods and Service Tax Rules, 2017, will also include a reference to the corresponding provisions under the relevant SGST/UTGST/IGST Acts and Rules in the present report.
22. The above Report of the DGAP was considered by this Authority and it was decided to allow the Respondent to file his consolidated written submissions by 16.03.2022. A notice dated 02.03.2022 was also issued to the Respondent asking him to explain why the Report of the DGAP dated 16.12.2021 should not be accepted and his liability for violating the provisions of Section 171 of the above Act should not be fixed.

23. The Respondent filed his consolidated written submissions dated 06.05.2022 vide which he has submitted that:-

- a) The three projects in question were not registered under RERA as the projects did not qualify as RERA projects.
- b) The order dated 11.12.2020 of this Authority and the DGAP's notice dated 23.09.2021 were challenged before the Hon'ble Delhi High Court in Writ Petition (Civil) No. 12329/2021. The writ petition was disposed off as withdrawn on 03.01.2022 with liberty to raise all the grounds urged in the petition as also such other grounds which may be available in law, with the appropriate legal authority.
- c) In the pre-GST regime, various duties/taxes like Central Excise Duty, VAT on purchase of inputs were becoming a cost. On introduction of GST, the said taxes were subsumed and ITC of GST paid was made available subject to restrictions and conditions provided in Section 16 and Section 17 of the CGST Act. The Respondent had determined the benefit accruing to him which was required to be passed on to the flat buyers and accordingly had passed on the benefit to all the eligible flat buyers.
- d) In total, he has passed on the benefit of ITC amounting to Rs. 17,13,88,832/- to his home buyers in the three projects. The bifurcation of which was reproduced below:-
 - i. Rs. 6,96,08,150/- to the home buyers of the project "The Camellias".

- ii. Rs. 4,59,47,817/- to the home buyers of the project "The Crest"; and
- iii. Rs. 5,58,32,865/- to the home buyers of the project "The Ultima".

e) SECTION 171 OF THE CGST ACT CANNOT BE APPLIED TO COMPARE CREDIT IN THE ERSTWHILE REGIME WITH THE ITC UNDER THE GST REGIME:-

- i. That Section 171 of the CGST Act was not applicable in the facts of the present case. Section 171 of the CGST Act provided for passing the benefit of reduction in rate of tax on any supply of goods or services or benefit of ITC, to the recipient by way of commensurate reduction in price.
- ii. That neither reduction in rate of tax on supply of goods / services nor benefit of ITC has been defined in the CGST Act. A reduction in rate of tax on supply of goods / services would mean a reduction in the rate of tax on goods /services supplied by a registered person. The Respondent was admittedly a construction service provider and supplied construction services on which there was no reduction in rate of tax.
- iii. While the phrase benefit of ITC has not been defined, the definition of ITC was contained in section 2(63) of the CGST Act, which is extracted for ready reference:-

63) "ITC" means the credit of input tax;

Input tax is defined in section 2(62):

“(62) “input tax” in relation to a registered person, means the central tax, State tax, integrated tax or Union territory tax charged on any supply of goods or services or both made to him and includes—

(a) the integrated goods and services tax charged on import of goods;


(b) the tax payable under the provisions of sub-sections (3) and (4) of section 9;

(c) the tax payable under the provisions of sub-sections (3) and (4) of section 5 of the Integrated Goods and Services Tax Act;

(d) the tax payable under the provisions of sub-sections (3) and (4) of section 9 of the respective State Goods and Services Tax Act; or (e) the tax payable under the provisions of sub-sections (3) and (4) of section 7 of the Union Territory Goods and Services Tax Act,

but does not include the tax paid under the composition levy;”

- iv. ITC means credit of input tax, and input tax means CGST, SGST, UTGST and IGST. Based on the definition of ITC and input tax, it would mean benefit in the form of availability of ITC of GST charged on procurement of certain goods/services, which was earlier not available as

ITC (either fully or partially) but became now available as ITC. For instance, under section 17(5)(a) of the CGST Act, ITC in respect of motor vehicles was not available (except in certain cases) and the said bar was on ITC in respect of all types of motor vehicles, irrespective of seating capacity. This was subsequently amended by the CGST (Amendment) Act, 2018 to provide that ITC shall not be available only in respect of motor vehicles having seating capacity of not more than 13 persons (including the driver), except in certain cases. The effect of this amendment was that in respect of motor vehicles exceeding the seating capacity of 13 persons, ITC was available. Section 171 is intended to cover such kind of situations, where ITC was not available earlier in GST regime itself and the benefit of same becomes subsequently available. 

- v. Furthermore, even the transitional provisions under Chapter XX of the CGST Act did not treat the erstwhile credit as ITC. In fact, it specifically mentioned the erstwhile credit as "CENVAT credit". Therefore, the expression "ITC" appearing in Section 171 must necessarily mean ITC in the GST regime only.
- vi. That the benefit of ITC could only arise within GST regime, on a change in provision relating to ITC. It is submitted that transition from pre-GST to GST regime

may entail certain benefits which the Respondent may pass on to its customers. However, the same could not be considered as benefit of ITC for the purpose of invoking the provisions of section 171. The comparison of the ITC with the CENVAT credit that existed under the CENVAT Credit Rules, 2004 and the respective VAT Acts to arrive at the benefit of ITC was beyond the scope of Section 171 of the CGST Act.

- vii. That the entire proceedings were beyond jurisdiction and the scope of Section 171 of the CGST Act and the DGAP's report was liable to be set aside based on this ground alone. Section 171 was inapplicable in the present facts as it applied only when there was a one-to-one identification between procurement of goods/services and their supplies. In the present case, since the same was not possible, the provisions of Section 171 were inapplicable.

f) PRESENT PROCEEDINGS ARE EX-FACIE WITHOUT JURISDICTION AND ALSO CONTRARY TO THE RELEVANT STATUTORY PROVISIONS:-

- i. There was no complaint filed by any flat buyer/customer or the Commissioner with respect to three projects in question, namely, "The Camellias", "The Crest" and "The Ultima". This Authority vide its order dated 11.12.2020 took suo moto cognizance and directed DGAP to

investigate Respondent's another project, namely "The Ultima".

- ii. That neither the CGST Act nor the CGST Rules confer any power either on this Authority or DGAP to initiate investigation against any of the registered persons on their own motion, i.e. suo moto. Initiation of investigation or proceedings against any person suo moto had legal ramifications and hence had to be specifically legally and statutorily provided for. In the absence of any such express conferment of suo moto power on this Authority or the DGAP to order investigation against any person, this Authority and the DGAP could act only based on the application filed by an interested party or Commissioner or any other person. Since in the present case, the investigations had been initiated pursuant to this Authority's direction, it was nothing but suo moto initiation of action which could not be allowed. In fact, this Authority at para 25 of its order dated 11.12.2020 records that after taking suo moto cognizance directed the DGAP in respect of Respondent's project, "The Ultima". Consequently, the order dated 11.12.2020 of this Authority and the DGAP's report dated 16.12.2021 had no legal sanctity and it was without authority or jurisdiction.

- iii. The Respondent has placed reliance on the judgment of the Hon'ble Supreme Court in Gujarat Urja Vikas Nigam Limited vs. Solar Semiconductor Power Company (India) Private Limited and Ors. (2017) 16 SCC 498, wherein it was held that Electricity Commission being a creature of statute cannot assume to itself any powers which were not otherwise conferred on it. Furthermore, in Rajeev Hitendra Pathak and Ors. v. Achyut Kashinath Karekar and Anr. 2011 (9) SCALE 287, the Hon'ble Supreme Court held that express power not having been conferred on the District Forum and the State Commission, they had no jurisdiction to recall an ex parte order.
- iv. That whenever the legislature intended a statutory body/authority to have suo moto powers, the same was prescribed for. The Respondent has made reference to the following statutes:-

S. No	Statutory Body	Parent Act
1	Competition Commission of India	Competition Act, 2002
2	Securities and Exchange Board of India	Securities and Exchange Board of India Act, 1992
3	Insurance Regulatory and Development Authority	Insurance Regulatory and Development Authority of India Act, 1999
4	Telecom Regulatory Authority of India	Telecom Regulatory Authority of India Act, 1997
5	Airports Economic Regulatory Authority	Airports Economic Regulatory Authority, 2008
6	Central Consumer Protection Authority	Consumer Protection Act, 2019
7	National Human Rights	Protection of Human

	Commission / State Human Rights Commission	Rights Act, 1993
8	Airports Authority of India / Eviction officers appointed under Section 28B	Airports Authority of India Act, 1994

- v. That the GST Council in its 17th meeting had specifically discussed the issue of whether this Authority should be conferred with suo moto powers. However, despite such discussions, no such specific powers had been conferred on this Authority. Instead, apart from an interested party, the Commissioner has been given the authority to file an application for initiation of anti-profiteering proceedings. Therefore, it was submitted that this Authority had no suo moto powers.
- vi. That the DGAP vide its earlier report dated 31.08.2020 had investigated Respondent's project, namely, "The Sky Court". As provided in Rule 133(4), this Authority could have only directed further investigations "in the matter" i.e., only Respondent's project "The Sky Court". Therefore, it was evident from the language of Rule 133(4) that this Authority did not have any power to expand the investigations and had no suo moto powers under Rule 133(4) to enquire into any project which was covered by the report. Therefore, the direction of this Authority to expand the investigations was unsustainable.
- vii. That Sh. Sudhir Jain in his application had submitted that the Respondent had wrongly charged GST @ 18% on

the Preferential Location Charges on the sale of flat to him after the issuance of completion certificate. It is submitted that there was no allegation of any violation of Section 171 of the CGST Act by him.

viii. That this Authority itself observed that the Applicant had made no allegation of violation of Section 171 in the application. Therefore, it is submitted that neither the DGAP nor this Authority had any jurisdiction to investigate pursuant to application/complaint made by Sh. Sudhir Jain. There was no legal basis for this Authority to direct investigations in Respondent's other projects as there was no complaint against the Respondent, alleging violation of Section 171 of the CGST Act. Thus, proceedings initiated against the Respondent were required to be dropped on this ground alone.

ix. That the directions of this Authority vide its order dated 11.12.2020 were only in respect of Respondent's project namely, "The Ultima". The DGAP had no authority to investigate Respondent's projects namely "The Camellias" and "The Crest". The DGAP did not have any authority or jurisdiction to conduct suo moto investigations.

g) ABSENCE OF ANY EVIDENCE AGAINST THE RESPONDENT, STANDING COMMITTEE ERRED IN MAKING REFERENCE TO THE DGAP:-

- i. That it had been prescribed in Rule 128(1) of the CGST Rules that the Standing Committee should examine the accuracy and adequacy of the evidence provided in the application, within a period of two months from the date of the receipt of a written application. In terms of Rule 129(1) of the CGST Rules, the Standing Committee shall refer the complaint to DGAP on being satisfied that there was a prima-facie evidence to show that the supplier had not passed on the benefit of reduction in prices. It was submitted that Standing Committee had acted in violation of both the abovementioned rules.
- ii. That Sh. Sudhir Jain had purchased the flat in Respondent's project "The Sky Court" subsequent to the date on which completion certificate was issued. It may be noted that in view of Paragraph 5 of Schedule III of the CGST Act, sale of building where entire consideration was received subsequent to issuance of completion certificate was neither treated as a supply of goods nor supply of services. Therefore, there could be no question of passing of GST benefit on the same. The allegation by Sh. Sudhir Jain was only in respect of GST charged on the preferential location charges on which GST was

required to be collected at 18%. He had made no allegation whatsoever that the Respondent did not pass the benefit of ITC or reduction in taxes. GST was applicable on the preferential location charges collected by the Respondent and accordingly the same was recovered from him. The Standing Committee ought to have considered the fact that there could be no question of benefit to be passed on to Sh. Sudhir Jain.

- iii. Thus, the Standing Committee had no evidence against the Respondent and had failed to provide any prima facie evidence based on which it had come to the conclusion that the allegation of profiteering needed to be investigated.
- iv. That as the reference by Standing Committee was not in accordance with the CGST Rules, the order dated 11.12.2020 of this Authority, the DGAP's notice dated 23.09.2021 and DGAP's report dated 16.12.2021 were required to be set aside on this ground alone.

h) PROCEEDINGS INITIATED ARE IN VIOLATION OF THE PRINCIPLES OF NATURAL JUSTICE:-

- i. That the Respondent was not provided any opportunity of hearing by the Standing Committee to present his case and / or address the concerns which Sh. Sudhir Jain might have had in this regard. The matter was referred by the Standing Committee to the DGAP without granting

any opportunity to the Respondent. In the absence of the same, there was gross violation of the principles of natural justice. The proceedings initiated in gross violation of the principles of natural justice could not be considered as valid and the same were liable to be dropped on this ground alone.

- ii. That the present proceedings have been issued in violation of principles of natural justice as show cause notice has not been issued to the Respondent proposing the action to be taken by this Authority. Moreover, the investigation was initiated basis the application filed by Sh. Sudhir Jain and the Respondent was not given any chance to clarify or explain its communication.
- iii. That based on the powers conferred on this Authority under Rule 133 of the CGST Rules, 2017, it could be said that this Authority's order could give directions to the person who has been held as having violated Section 171. It is submitted that the order required to be passed by this Authority under Section 171 would determine rights and liabilities of the said registered person with civil and/ penal consequences.
- iv. That the report consequent to investigation by the DGAP was neither a show cause notice nor could it be treated as substitute to a show cause notice. However, from the hearing notice received by the Respondent, it appeared

that this Authority had considered the report of the DGAP as a show cause notice, which was not correct. It was submitted that this Authority should have issued a show cause notice before examining the alleged profiteering. Such show cause notice should contain the following:-

- a. description of the goods and services in respect of which the proceedings have been initiated;
 - b. grounds / reasons on the basis of which profiteering has been alleged;
 - c. issues proposed to be examined by this Authority; and
 - d. action proposed to be taken by this Authority against the Respondent invoking applicable statutory provisions
- v. That unless the aforementioned information was made available to the Respondent, he could not defend his case and make requisite submissions before this Authority. It was submitted that in the present case except for providing a copy of the report of the DG, as on date the Respondent had not been served any notice/communication regarding the issues to be examined and actions proposed to be taken against the Respondent. The Respondent could not presume the report of DG to be a show cause notice and defend himself.

vi. That even if the CGST Act and the CGST Rules did not provide for issuance of a show cause notice before initiating proceedings under Section 171, the Authority should have issued a show cause notice to the Respondent in terms of principles of natural justice as held by courts in various cases.

i) IN ABSENCE OF PRESCRIBED METHOD OF CALCULATION OF PROFITEERING IN THE ACT OR THE RULES OR THE PROCEDURE, THE PROCEEDINGS ARE ARBITRARY AND LIABLE TO BE SET ASIDE:-

i. That the CGST Act read with the CGST Rules did not provide the procedure and mechanism of determination and calculation of profiteering. In absence of the same, the calculation and methodology used in the report was arbitrary and was in violation of principles of natural justice.

ii. As per Rule 126, the Authority had the power to determine the methodology and procedure for determination as to whether the reduction in rate of tax on the supply of goods or services or the benefit of ITC had been passed on by the registered person to the recipient by way of commensurate reduction in prices. It was pertinent to note that as on date, CGST Rules had not prescribed any procedure/ methodology/ formula/ modalities for determining/ calculating 'profiteering'.

- iii. The Procedure and Methodology and Procedure issued by the Authority on 19.07.2018 only provided the procedure pertaining to investigation and hearing. However, no method/formula had been notified/prescribed pertaining to calculation of profiteering amount.
- iv. That under CGST Act or Rules made thereunder, there was no indication, let alone description as to how to conclude that there was profiteering due to reduction in rate of tax or benefit of ITC. Whether such computation had to be done customer-wise, project-wise or entity-wise, etc. Further, there was no indication in section 171 of the CGST Act as to its applicability in respect of transactions from pre-GST to GST regime. Rules did not throw any clarity on this issue as well. In the absence of the same, there was lack of transparency and the results could vary from case to case resulting in arbitrariness and violation of Article 14 of the Constitution of India. In other words, it would be impossible for the Respondent to defend his case and explain how the observations and findings of the DGAP were incorrect, thus, violating the principles of natural justice. Absence of such mechanism or framework within which the Authority/DGAP must discharge their duties, would also lead to arbitrariness.

- v. That the practice adopted by other countries where GST is/was in place viz. the Malaysian Government introduced the 'Price Control and Anti-Profiteering (Mechanism to Determine Unreasonably High Profit) (Net Profit Margin) Regulations 2014, which provided for the mechanism to calculate whether any company has profited on account of GST or not. The anti-profiteering measures in Australia revolved around the 'Net Dollar Margin Rule' serving as the fundamental principle for its guidelines. That is, if the new tax scheme - GST in this case - caused taxes and costs to fall by \$1, then prices should fall by at least \$1. At the same time if the cost of the business rose by \$1 under the new tax scheme, then prices might rise by not more than \$1. These regulations had been set as barometers for calculating profiteering. It is submitted that no such procedure for calculation of profiteering had been provided under the CGST Act and CGST Rules. Absence of the same violated the principles of natural justice and thus, the investigation was liable to be set aside. Reliance has been placed on the case of ***Eternit Everest Ltd. vs. Union of India***, reported at ***1997 (89) E.L.T. 28 (Mad.)***, where the Hon'ble Madras High Court has held that in absence of machinery provisions pertaining to determination and adjudication

upon a claim or objection, the statutory provision will not be applicable.

- vi. In the case of ***Commissioner of Income Tax, Bangalore vs. B.C. Srinivasa Setty***, reported as **(1981) 2 SCC 460**, the Hon'ble Supreme Court held that charging section is not attracted where corresponding computation provision is inapplicable. It is submitted that relying on the case of BC Srinivas Shetty, Allahabad HC in the case of ***Samsung (India) Electronics Pvt. Ltd. vs. Commissioner of Commercial Taxes U.P. Lucknow***, reported as **2018[11] G.S.T.L. 367** observed that in the absence of any procedure or provision in the UP VAT Act, 2008 Act, in the case of a sale of composite packages bearing a singular MRP, the authorities under the Act cannot possibly assess the components of such a composite package separately. Such an exercise, if undertaken, would also fall foul of the principles enunciated by the Supreme Court. In this regard, reliance has also been placed on the case of ***Union of India vs. Suresh Kumar Bansal*** reported as **2017 (4) G.S.T.L. J128 (S.C.)**, wherein it was confirmed by the Hon'ble SC that explanation added to Section 65(105)(zzzh) of the Finance Act, 1994 vide the Finance Act, 2010 expanding scope of taxability of Construction of Complex intended for sale by builders, was ultra vires as there was no

statutory mechanism to ascertain value of service component of subject levy.

- vii. That this Authority was itself using different methodology to ascertain 'profiteering' in the cases before it. In some cases, the Authority had restricted itself to the goods mentioned in the application, while in some it had considered business as a whole. In the facts of the case, analysis had been done for all the projects combined whereas in other cases, analysis was done only for the project of the flat buyer who filed the application. This shows that there was no defined procedure being adopted by the Authority leading to arbitrariness.
- viii. That the CGST Act and CGST Rules themselves had acknowledged challenges in making applicable certain provisions consistently across sectors, and special rules had been provided for applying on specific sectors. These included reversal of ITC required to be made by a banking company or a financial institution including a non-banking financial company in terms of section 17(4) of the CGST Act, determination of value of taxable supply for supply of money changing service, life insurance business, etc. in terms of rule 32 of the CGST Rules, special provision for reversal of ITC by real estate sector in terms of rule 42 and rule 43 of the CGST Rules, etc. The nature of real estate sector was unique for

determining applicability of anti-profiteering provisions, especially considering the project life cycle, timing difference between availment of credit and payment of output tax liability, procurement of multiple inputs / input services for supplying the service and no one to one correlation between input and output. In light of the said facts, there ought to have been a standard methodology to determine the profiteering for real estate sector.

j) COMPARISON OF RATIO OF ITC TO TURNOVER FOR PRE-GST PERIOD AND GST PERIOD IS NOT THE CORRECT MECHANISM FOR CALCULATION OF PROFITEERING AMOUNT:-

- i. That the DGAP had arrived at the figures of alleged profiteering on the basis of the difference between the ratio of ITC to turnover under the pre-GST and GST period. That using this formula for calculating the benefit of additional ITC accrued to the Respondent would never yield the correct quantum of profiteering.
- ii. The comparison of above ratio was not appropriate for the reason that under the real estate sector, there was no correlation between turnover and the cost of construction or development of a project. The turnover reflected the amount collected by developer as per payment or booking plans issued by it which was purely based on market driven strategy. On the contrary, the ITC accrued

to a developer on the basis of actual cost incurred by him while undertaking the development of a project. Accrual of ITC was not dependent on the amount collected from the buyers. In this industry, there might be cases where advance was received by the suppliers/dealers even before the commencement of the projects. Likewise, units might be sold after the completion of the project as well. Thus, receiving of inputs/input services and taking credit of the same did not have any immediate/direct relation with the turnover in real estate sector. Accordingly, calculating profiteering on the basis of turnover could not reflect the correct outcome of benefit of credit to the Respondent.

iii. The method would result in incorrect computation of benefit for the following reasons/ assumptions:-

- a. Construction Project Life cycle effect had been ignored and it had been assumed that uniform expenses were incurred throughout the lifecycle of the project. In other words, this methodology assumed that uniform expenses were incurred throughout the project lifecycle and that turnover would also be uniform, which practically varies a lot given the market conditions and was objectively, an incorrect assumption to make.

- b. The turnover would vary as per the market conditions and it was difficult to maintain the ratio of the same in proportion to procurement in a real estate sector. For example, turnover would be less in lean period while credit would still be higher due to continuous use of inputs/input services for construction
- c. ITC was an absolute number which would vary as per the Govt. rate policies. A lot of goods had been moved from 28% to 18% slab. This had not resulted into any benefit to the registered buyers as they were entitled to credit in both scenarios. However, this would significantly vary the ratio as calculated by the DGAP to assess the benefit of credit
- d. Reversal of ITC due to receipt of Completion Certificate also had a bearing on ITC availed by the supplier/developer. Such a critical factor needed to be given appropriate weight while making the final computation. However, the DGAP had added back such reversal without adducing any reasons for such addition.
- e. In pre-GST regime, services were subject to Service Tax at rate of 15% but under GST, in most of the cases, the said services were taxable at 18%, therefore, there was an increase of 3% in ITC

available to the Respondent which was not due to any additional benefit but due to increase in rate of tax. This credit was available to the Respondent even before GST and hence, the Respondent could not be asked to transfer this additional credit to the customers. The impact on this account (due to increase in tax rate of services) is as follows:-

Particulars	Pre-GST	Post-GST
ITC (assuming services of Rs. 100 received from a vendor)	15	18
Taxable turnover	120	120
% of Credit	12.5%	15%

- f. Based on the above calculation, it was submitted that if the value of service received and value of service provided pre and in GST regime had remained the same, there was an increase of 2.5% of ITC, however, in reality, there was no additional benefit arising to the Respondent as he had paid an additional 3% tax to its service providers and taken ITC of the same. The amount (%) would increase in case services were procured in April'16 to May'16, when Service Tax rate was 14.5%. In other words, increase in the tax rate did not result in a benefit.

Tax was paid in advance to supplier and availed as credit and utilized for payment of output tax. In other words, increase in rate of tax reduced the net amount of tax to be paid in cash and was not a benefit.

- g. Further, the Respondent submitted the below illustration to prove that different rates of GST would lead to difference in calculation of benefit:-

Sr. No.	GST rate of input	Basic price of inputs	ITC under GST	Cost to Respondent (equal to basic price, since ITC fully available)	Amount demanded from customer (i.e. turnover)	Profit	Ratio of ITC to turnover
1	28%	100	28	100	110	10	25.45%
2	18%	100	18	100	110	10	16.36%
3	12%	100	12	100	110	10	10.90%

- h. As could be seen from the above, difference in rate of GST was leading to change in ITC to turnover ratio, which would change the benefit of ITC. However, it was submitted that the rate of GST did not determine the actual benefit. Rather, the duties / taxes and rates in pre-GST regime which were non-creditable but had become creditable in the GST regime alone determine the benefit. The benefit needed to be computed based on the tax rates prevailing in pre-GST regime, and the rate of

- GST charged by suppliers was irrelevant for determination of benefit derived by the Respondent
- i. That the additional ITC in the hands of Respondent in terms of Section 171 of the CGST Act should reflect such ITC on goods or services which was not available earlier to the Respondent. However, the approach adopted by DGAP for calculating the additional benefit accrued to the Respondent was based on the change in rate of tax on input goods and services in the GST regime itself. It was pertinent to mention that credit with respect to such inputs/input services was available to the Respondent earlier as well before the change in the rate. Further, the DGAP had not considered the tax cost which was earlier blocked in the hands of Respondent. Hence, the above approach of comparison of ITC to turnover ratio for pre-GST and post GST period for a limited period instead of project duration was not a correct approach and profiteering computed on basis of same was liable to be set aside on this count itself.
- j. In order to further substantiate that the credit to turnover ratio was not the correct method for computation of benefit of credit, the Respondent submitted that the credit to turnover ratio may vary

in the same regime itself. For instance, Respondent's credit to turnover ratio for the project, The Camellias for the period July 2017 to March 2018 and FY 2018-19 was tabulated below:-

Particulars	July 2017 to March 2018	April 2018 to March 2019
ITC	15.252	18.998
Turnover	47.634	568.287
Credit to turnover ratio	32.01	3.34
Difference in credit to turnover ratio	28.67	

- k. That within the same regime for two given periods, the credit to turnover ratio could vary as highlighted in the above table. Similar exercise could be done in the pre-GST regime to show that credit to turnover ratio would vary:-

Particulars	April 2016 to March 2017	April 2018 to March 2019
Cenvat Credit	29.329	8.924
Turnover	2251.512	1716.531
Credit to turnover ratio	1.30	0.52
Difference in credit to turnover ratio	0.78	

- l. The comparison of pre-GST credit to turnover ratio to the post-GST ratio had resulted in skewed and inconsistent results in various orders passed by this Authority. The percentage of credit to turnover ratio

(in GST regime) has varied from 0.2% (in Vatika Limited, Case No. 64/2019) to 20.98% (in Emaar MGF Land Ltd., Case No. 26/2020).

m. That the Hon'ble Finance Minister/Chairperson of GST Council in the 32nd GST Council Meeting dated 10.01.2019 while summarizing the challenges faced by the real estate sector had stated that combined ITC available to a builder is 8-9%. The relevant extract from the minutes of 32nd GST Council Meeting dated 10.01.2019 was produced by the Respondent as under:-

"12.6 The Hon'ble Chairman summarized the proposal and the challenges faced by the sector. He stated that there was a slowdown in the sector which impacted creation of employment in the economy and consequently affected the allied sectors such as steel, cement, paints and other construction items. It, therefore, impacted the availability of inventory in the market and ultimately tax revenue. He added the principal reasons identified for this situation were:

a...

b...

c. It was also a fact that builder paid tax of 28% on cement, 18% on majority of other input items and

12% on some other materials and combined ITC available to him for payment of his output tax came to 8-9%. Eventual tax burden on him would be 12% minus the ITC available to him".

- n. that the percentage of credit to turnover (in the GST regime) in the Respondent's case also has varied from 1.84% (for the project "The Camellias") to 17.46% (for the project "The Ultima")
- o. Comparing the pre-GST credit to turnover ratio to the post-GST ratio will therefore never yield the correct outcome of benefit of credit. It is therefore submitted that the method adopted by DGAP is wholly incorrect, without any logic. The report of the DGAP is therefore liable to be set aside on this ground alone
- p. That the percentage of credit to turnover (in the GST regime) in the Respondent's case also had varied from 1.84% (for the project "The Camellias") to 17.46% (for the project "The Ultima"). Comparing the pre-GST credit to turnover ratio to the post-GST ratio will therefore never yield the correct outcome of benefit of credit. It was therefore submitted that the method adopted by DGAP was wholly incorrect, without any logic. The report of the DGAP was

therefore liable to be set aside on this ground alone.

k) EXCLUSION OF LAND VALUE FROM THE CALCULATION OF PROFITEERING AMOUNT:-

- i. That the Respondent collected from his customers not only the value of taxable construction services, but also collected the value of land. Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building was treated as neither supply of goods nor supply of services, as per paragraph 5 of Schedule III of the CGST Act.
- ii. Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 provided for exclusion of land value from the value of taxable construction services and deems the value of land as 1/3rd of the total amount charged from customers. In this regard, reference could be made to Para 2 of the aforesaid notification, extracted below:-

"2. In case of supply of service specified in column (3), in item (i); (i) (ia), (ib), (ic), (id), (ie) and (if) against serial number 3 of the Table above, involving transfer of land or undivided share of land, as the case may be, the value of such supply shall be equivalent to the total amount charged for such supply less the value of transfer of land or undivided share of land, as the case may be, and the value of such transfer of land or undivided share of land,

as the case may be, in such supply shall be deemed to be one third of the total amount charged for such supply.”

Emphasis supplied

- iii. Section 171(2) of the CGST Act empowered the Central Government to constitute an Authority / empower an existing Authority to inter alia examine whether ITCs availed by a registered person had actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him. Benefit of ITC needed to be passed on by way of reduction in the price of services only. It was an admitted position that 1/3rd of the total amount charged was towards land and not towards the services provided by Respondent. Accordingly, it was submitted that for the purpose of calculation of profiteering, if any, the value of land needed to be excluded.
- iv. In this regard, reference could be drawn to the Order of this Authority in the case of **M/s. Bhartiya City Developers Pvt. Ltd.** The DGAP excluded value of land from its profiteering calculation in Table H of its report and the same was upheld by the Authority. The relevant extract of order passed by the Authority was provided below:-

“21.. On the basis of the figures contained in Table- ‘G’ above the recalibrated base price and the excess collection (Profiteering) during the pre-GST and the post-GST periods, has been tabulated by the DGAP in Table- ‘H’ below:-.

(Amount in Rs.)

S.No.	Particulars		Pre-GST	Post- GST
1.	Period	A	April, 2016 to June, 2017	July, 2017 to August, 2018
2.	Output tax rate on Construction Service (%)	B	16.15	18.00
3.	Ratio of CENVAT/ITC to Total Turnover as per Table - I above (%)	C	4.32	6.55
4.	Increase in ITC availed post-GST (%)	D=6.55% less 4.32%	-	2.23
5.	<u>Analysis of Increase in ITC:</u>			
6.	Total Base Price <u>excluding land value</u> raised during July, 2017 to August, 2018	E		2,04,02,02,792
7.	Less: Base Price raised during July, 2017 to August, 2018 (Flats sold after 01.07.2017 as per new agreement)	F		11,43,05,220
8.	Base Price raised during July, 2017 to August, 2018 (Flats sold upto 30.06.2017)	G=E-F		1,92,58,97,572
9.	GST raised @ 18% over Base Price	H=G*18%		34,66,61,563
10.	Total Demand raised	I=G+H		2,27,25,59,135
11.	Recalibrated Base Price	J=G*(1-D) or 97.77% of E		1,88,29,50,056
12.	GST@18%	K=J*18%		33,89,31,010
13.	Commensurate demand price	L=J+K		2,22,18,81,066
14.	Excess Collection of Demand or Profiteered Amount	M=I-L		5,06,78,069

- v. Similarly, in the Order of this Authority in the case of **M/s. Fusion Buildtech Pvt. Ltd.**, the DGAP excluded value of land from its profiteering calculation and the same was upheld by the Authority.
- vi. Assuming the computation done by DGAP was correct, **an amount of Rs. 8,36,36,125/-** (as demonstrated below) **needed to be reduced from the total profiteering determined in the DGAP report on account of land value.** The calculation of same was as follows:-

Project (A)	Profiteering Amount (B)	Profiteering amount on land (C) (B/3)	Profiteering on value excluding land value(C-B)
The Camellias	7,23,50,135/-	2,41,16,712/-	4,82,33,423/-
The Crest	12,94,35,170/-	4,31,45,057/-	8,62,90,113/-
The Ultima	4,91,23,070/-	1,63,74,357/-	3,27,48,713
Total	25,09,08,375/-	8,36,36,125/-	16,72,72,250


I) ALLEGED PROFITEERING AMOUNT HAS BEEN INCORRECTLY INFLATED IN THE REPORT BY ADDING GST AND THE SAME IS NOT SUSTAINABLE:-

- i. That the profiteered alleged by the DGAP was arrived at by comparing the amount collected / raised by Respondent from his customers including GST @ 12%, with the recalibrated prices / commensurate base price including GST. For instance, if the Respondent had

charged INR 100 + 12% GST thereon (thus totaling to INR 112 incl. GST), but as per the DGAP, the Respondent should have charged INR 90 + 12% GST thereon (thus totaling to INR 100.8), the profiteering has been computed as difference of INR 112 and 100.8, i.e. INR 11.2. In effect, it was the DGAP's contention that the Respondent had profiteered to the extent of 12% GST collected on so called increased base price (i.e. INR 10 and 12% GST on top of it = INR 11.2 profiteering).


- ii. That while arriving at the total alleged profiteering amount, the DGAP had incorrectly inflated the profiteering amount by adding 12% GST to the base price demanded by Respondent and comparing it with the commensurate base price including 12% GST, without adducing grounds as to why this amount had been added.
- iii. That whatever amount was charged as GST by the Respondent had been duly deposited in government account. There had been no allegation that the amount collected as GST had not been paid to the government. Once it was accepted that such amount was also tax and the public exchequer was not deprived of such sum, it failed to appeal to reason that the same tax amount could

be demanded again from the Respondent or return of such tax amount in the homebuyers could be ordered.

- iv. It was an undisputed fact that the Respondent charged GST from his customers, over and above the value of services supplied by him, i.e., on ex-tax basis. It was also undisputed that the Respondent deposited the amount collected by him as GST, by filing monthly returns in Form GSTR-3B. Therefore, the amount of GST collected by the Respondent from his customers stood paid to the government exchequer.
- v. Assuming, without admitting, that the Respondent had profiteered and GST had been collected thereon and said GST was to be refunded back to the customers, then instead of Respondent, the Government could transfer the amount equivalent to GST on the profiteered amount to the customers. 
- vi. That the term 'Profiteering' always had reference to a registered person. It implied that the profiteered amount was retained by the registered person. Therefore, with respect to the alleged excess GST paid by the recipient which was not retained by the Respondent but promptly paid to the Government as tax (on which there is no dispute), it was submitted that the Respondent could not be alleged to have profiteered..

- vii. That addition of 12% would have been correct if the case of DGAP was that the amount had been collected and retained by the Respondent and not deposited with the Government. In this regard, reliance was placed on the case of ***R.S. Joshi, Sales Tax Officer, Gujarat v. Ajit Mills Limited*** reported at (1977) 4 SCC 98, wherein the Supreme Court analysed what the term "collected" meant in the context of the sales tax legislation of Gujarat. It observed as under:-

"34. Section 37 (1) uses the expressions, in relation to forfeiture any sum collected by the person - shall be forfeited'. What does collected' mean here? Words cannot be construed effectively without reference to their context. The setting colours the sense of the word. The spirit of the provision lends force to the construction that 'collected' means "collected and kept as his" by the trader. If the dealer merely gathered the sum by way of tax and kept it in suspense account because of dispute about taxability or was ready to return if eventually it was not taxable, it is not collected. 'Collected., in an Australian Customs Tariff Act, was held by Griffith C.J., not .to include money deposited under an agreement that if it was not legally payable it will be returned' (Words & Phrases p. 274). We therefore, semanticise. Collected'



not to cover amounts gathered tentatively to be given back if found non-exigible from the dealer."

- viii. Since the amount collected as GST by the Respondent from the recipients on the alleged profiteering amount had already been deposited with Government and there was no factual dispute by the DGAP on this aspect, the Respondent submitted that addition of 12% GST to calculate the alleged profiteering amount was incorrect, not sustainable and liable to be rejected. Therefore, the Respondent humbly submitted that out of the total amount of profiteering of Rs. 25,09,08,375/-, an amount of Rs 2,68,83,040 should be reduced from the total profiteering alleged by DGAP. Project wise GST amount is tabulated below:-

(Figures in Rs.)

Project wise GST component in the alleged profiteering amount			
Project	Profiteering amount alleged by DGAP	GST component	Revised profiteering amount
The Camellias	7,23,50,135/-	77,51,800/-	6,45,98,335/-
The Crest	12,94,35,170/-	1,38,68,054/-	11,55,67,116/-
The Ultima	4,91,23,070/-	52,63,186/-	4,38,59,884/-
Total	25,09,08,375/-	2,68,83,040/-	22,40,25,335/-

m) DGAP ERRED IN CONSIDERING (1) THE PERIOD POST RECEIPT OF COMPLETION CERTIFICATE (2) CONSIDERING THE SAME AREA ON BOTH SIDE OF THE

**PAYMENT RECEIVED OR DEMAND RAISED DURING THE
PRE GST-PERIOD AS WELL AS POST GST PERIOD
IRRESPECTIVE OF THE QUANTUM:-**

- i. That this Authority vide its order dated 11.12.2020 had rejected DGAP's earlier report (for the project, "Sky Court") on the basis that DGAP ought not to have considered ITC availed by Respondent after the receipt of completion certificate. For computation of credit to turnover ratio, DGAP had considered period from 01.07.2017 to 31.07.2019. In this regard, THIS AUTHORITY held that as the completion certificate for the project Sky Court was received on 17.07.2017, the period of investigation should have been restricted to 16.07.2017. The relevant extract from the THIS AUTHORITY's order dated 11.12.2020 reads as below:-

"22. ... It is also revealed that from the above Report of the DGAP that the Respondent has received Completion Certificate on 17.07.2017 in respect of the above project. Since, the Respondent has received Completion Certificate on 17.07.2017, the period of investigation should have restricted up to 16.07.2017 and the investigation should not have been conducted up to 31.07.2019 unless there were justifiable grounds to do so. However, no such grounds have been mentioned by the DGAP in the Report".

- ii. That DGAP in its present report has erred in considering the period after receipt of the completion certificate for Respondent's three projects. Respondent received the completion certificate on the following dates:-

S.No	Project	Date of completion certificate
1.	The Camellias	27.07.2017
2.	The Crest	24.07.2017
3.	The Ultima (Tower E,H,J,K,L & EWS)	11.06.2018
4.	The Ultima (Tower-A,B,N,Q,R & Shops)	05.02.2019

- iii. That for all the three projects, DGAP has taken the period of investigation from 01.07.2017 to 30.11.2020. It is submitted that DGAP erred in computing profiteering for the period beyond the date of receipt of completion certificate as tabulated above. The DGAP's report is contrary to THIS AUTHORITY's direction vide order dated 11.12.2020 and therefore, the proceedings against the Respondent are liable to be dropped.
- iv. that DGAP erred in considering the same area on both side while comparing the profiteering which has resulted in wrong calculation of percentage of profiteering e.g. a buyer has booked an apartment for Rs. 1,80,00,000/- having an area of 3,000 sq. ft. during the financial year 2016-2017 and has made a payment of Rs. 1,40,00,000/- during the period upto 30-06-2017 i.e. pre GST period and has made a payment of Rs. 20,00,000/- only during

the GST period upto 30-11-2020 and balance Rs. 20,00,000/- was still payable by him as on 30-11-2020, the area of 3,000 Sq Ft. has been considered under pre-GST period as well as GST period, the same has resulted in wrong computation of profiteering.

n) THE RESPONDENT HAS ALREADY PASSED ON THE BENEFIT OF ITC TO THE TUNE OF RS. 17,13,88,832/- FOR THE THREE PROJECTS COMBINED:-

- i. That without prejudice to the above, the Respondent vide his submissions dated 11.12.2021 (Annexure 12 of the DGAP's report) in excel sheets submitted to the DGAP the total amount of benefit passed on to the eligible flat buyers. It is submitted that Respondent has passed on benefit to all the flat buyers who had booked flats prior to issuance of occupation certificate and prior to introduction of GST i.e., 01.07.2017.
- ii. Along with the amount of benefit passed on, the excel sheets also contained information such as customer code, booking date, unit number, saleable area, total agreement value, demand raised and advances received, balance demand to be raised etc.
- iii. The Respondent, in total, has passed on the benefit of ITC to the tune of Rs. 17,13,88,832/- to the flat buyers of the three projects. The project-wise bifurcation of the benefit passed on is as under:-

1. Rs. 6,96,08,150/- to the home buyers of the project "The Camellias";
 2. Rs. 4,59,47,817/- to the home buyers of the project "The Crest"; and
 3. Rs. 5,58,32,865/- to the home buyers of the project "The Ultima
- iv. Respondent's submission was also recorded at Para 28 of the report, however, the DGAP in his report has not adjusted the benefit passed on by to arrive at the total profiteered amount. DGAP further records at Para 28 of the report that no documentary evidences were submitted by the Respondent. It is submitted that the Respondent had submitted the excel sheet containing details of each flat buyer and the amount of benefit which was passed on. However, no further information was called for to verify the benefit passed on by the Respondent.
- v. The Respondent has passed on benefit of ITC by adjusting the same from the demands raised. The benefit of ITC/GST is shown as a separate line item in the final statement of accounts ('FSOA') and the same can be verified from the ledger accounts of flat buyers.
- vi. The benefit of ITC has been calculated project wise by adding the following:-
1. Benefits due to reduction in sourcing costs due to increase in credits;

2. VAT which would have been by the Respondent on its own account if GST was not introduced.

vii. The total benefit was then divided by total area to arrive at the per square feet benefit to be passed on to the flat buyers. The amount of benefit passed on was also reviewed by the Chartered Accountant.

viii. In light of the above evidence and documents filed by the Respondent, the benefit amounting to Rs. 17,13,88,832/- was required to be considered as the same has already been passed on to the flat buyers.

o) OTHER GROUNDS:-

- i. In absence of a judicial member, the constitution of this Authority is improper
- ii. Section 171 of the CGST Act and Rules made thereunder pertaining to anti-profiteering are unconstitutional being violative of Article 14 and Article 19(1)(g) of Constitution of India;
- iii. Rules 126, 127 and 133 of the CGST Rules suffer from the vice of excessive delegation;
- iv. Non-prescription of any methodology or guidelines render the investigation report unsustainable. On the basis of the aforementioned submissions it is submitted that the proceedings being violative of

principles of natural justice are liable to be dropped in entirety.

24. Vide the above submissions dated 06.05.2021, the Respondent has further stated that he did not want any personal hearing in this matter.
25. This Authority has carefully considered the Report filed by the DGAP, all the submissions and the documents placed on record and the arguments advanced by the Respondent. It is found that the Respondent is executing four projects namely 'The Sky Court', 'The Ultima', 'The Crest' and 'The Camellias' under single GST registration. This Authority vide its I.O. No. 38/2020 dated 11.12.2020 passed in respect to the project 'The Sky Court' has directed the DGAP under Section 171(2) of the CGST Act, 2017 to investigate all the projects of the Respondent on which the Respondent is availing ITC from the common pool and to determine whether the Respondent has passed on the benefit of ITC to his buyers of each project which were executed by the Respondent or not. Hence, the present investigation has been carried out by the DGAP with respect to the three projects namely 'The Ultima', 'The Crest' and 'The Camellias' other than 'The Sky Court' which has been separately investigated by the DGAP and the Report has been submitted on 03.03.2021.
26. On examining the various submissions we find that the following issues need to be addressed:-

a) Whether there was any violation of the provisions of Section 171 (1) of the CGST Act, 2017 in this case?

b) If yes what was the additional benefit that has to be passed on to the recipients?

27. The Respondent has contended that in the present case, the provisions of Section 171 of the CGST Act are not applicable. Neither reduction in rate of tax nor benefit of ITC have been defined in the CGST Act. In the erstwhile pre-GST regime, input credit was mentioned as 'CENVAT credit' whereas in the GST regime the input credit is mentioned as 'ITC'. Hence, the benefit of ITC could only arise within GST regime, on a change in provision relating to ITC. That transition from pre-GST to GST regime may entail certain benefits which the Respondent may pass on to his customers. However, the same could not be considered as benefit of ITC for the purpose of invoking the provisions of section 171. The comparison of the ITC with the CENVAT credit that existed under the CENVAT Credit Rules, 2004 and the respective VAT Acts to arrive at the benefit of ITC was beyond the scope of Section 171 of the CGST Act. In respect of the above contention of the Respondent, it is relevant to mention here that Section 171 (1) of the CGST Act, 2017 provides that *"Any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices."* It is clear from the plain reading of the above provision that it mentions **"reduction in the rate of tax or benefit of ITC"** which means that if

any reduction in the rate of tax is effected by the Central or the State Governments or if a registered supplier avails the benefit of additional ITC the same have to be passed on by him to his recipients since both the above benefits are being given by the above Governments out of their tax revenue. Although there has been no reduction in the rate of tax in the case of Construction Service, however, a number of taxes and duties which were being levied under the State Acts of Haryana has been subsumed in the GST under the CGST and Haryana GST Act, 2017 on which ITC is now available to the Respondent under Section 16 of both the above Acts. Accordingly, the Respondent has become entitled to ITC as Central Excise Duty, Sales Tax and Entry Tax which was not available to him in the pre-GST regime, which has been turned as benefit of ITC which is required to be passed on as per Section 171 by the Respondent. ITC has been duly defined in the CENVAT Credit Rules, 2004, the Haryana VAT Act, 2003 and the CGST Act and hence there is no ambiguity in computing the additional benefit of ITC. Hence, there is no need to further define 'the reduction in the rate of tax or the benefit of ITC'.

Further, the benefit of additional ITC would depend on the comparison of the ITC/CENVAT which was available to the Respondent in the pre-GST period with the ITC available to him in the post GST period w.e.f. 01.07.2017. Without comparing the pre and post GST ratio of CENVAT/ITC to turnover, the exact quantum of profiteering amount cannot be determined. Hence, to arrive at the

benefit of additional ITC, the comparison of CENVAT with ITC is within the scope of Section 171 of the Act.

28. The Respondent has further contended that there was no complaint filed by any flat buyer/customer with respect to the three projects namely "The Camellias", "The Crest" and "The Ultima". Neither the CGST Act nor the CGST Rules confer any power either on this Authority or DGAP to initiate investigation against any of the registered persons on their own motion, i.e. suo moto. He has further contended that the complaint filed by Sh. Sudhir Jain in his project 'The Sky Court' was only with respect to the wrong charging of GST @18% on the Preferential Location Charges on the sale of flat after issuance of Completion Certificate and no allegation of the violation of Section 171 of the above Act was levelled by him. The Respondent has placed reliance on the judgment of the Hon'ble Supreme Court in **Gujarat Urja Vikas Nigam Limited vs. Solar Semiconductor Power Company (India) Private Limited and Ors. (2017) 16 SCC 498** and **Rajeev Hitendra Pathak and Ors. v. Achyut Kashinath Karekar and Anr. 2011 (9) SCALE 287**.

29. With regard to the above contentions of the Respondent, the Authority finds that from the perusal of the Section 171(2) of the CGST Act, 2017 it is clear that the benefits of tax reduction and ITC are to be passed on by each registered person by commensurate reduction in prices on each supply to every recipient and this Authority is empowered to examine whether these benefits have been passed on or not. To assist this Authority while making such

examination an investigating agency designated as the DGAP has been created under Rule 129 of the CGST Rules, 2017 to conduct detailed investigation and submit Report to this Authority under Rule 129 (6) to determine whether the above benefits have been passed or not in terms of Section 171 (1) and Rule 133 (1) of the above Rules. Under Rule 129 (2) the DGAP has mandate to conduct investigation and collect necessary evidence to determine whether these benefits have been passed on. Further, the Government of India, Ministry of Finance, Department of Revenue, Central Board of Indirect Taxes and Customs vide its Office Order No. 05/Ad.IV/2018 dated 12.06.2018 in pursuance of the Government of India (Allocation of Business) 34th Amendment Rules, 2018 has assigned the following duties to the DGAP:-

- a. "Conduct of investigation to collect evidence necessary to determine whether the benefit of reduction in the rate of tax on any supply of goods or services or the benefit of input tax credit has been passed on to the recipient by way of commensurate reduction in prices, in terms of Section 171 of the Central Goods and Services Tax Act, 2017 and the rules made thereunder.
- b. Responsibility for coordinating anti-profiteering work with the National Anti-profiteering Authority, the Standing Committee and the State level Screening Committees."

Therefore, the Authority finds from the above provisions that the Office of the DGAP has been charged with the responsibility of

conducting detailed investigation to collect evidence necessary to determine whether both the above benefits have been passed on or not in terms of the provisions of Section 171 of the CGST Act, 2017 and the Rule 129. The above Rule has been framed by the Central Government under Section 164 of the CGST Act, 2017 read with Section 171(3) which has approval of the Parliament and all the State Legislatures and of the GST Council which is a constitutional body established under 101st Amendment of the Constitution and also has approval of the Central Government and the State Governments. There is no provision in the above Act or the Rules which provides that the investigation shall be limited to the projects against which complaint has been received. Moreover Section 171 (2) of the above Act empowers this Authority to examine all such cases in which the benefit of tax and ITC is required to be passed on. Since the Respondent is executing all his projects under single registration and availing ITC on all the projects executed under a common pool, all the projects being executed by the Respondent are required to be investigated to determine whether the benefit of additional ITC has been passed on each product to each buyer or not. Hence, the directions of this Authority vide its order dated 11.12.2020 have been rightly conveyed as the same fall within the jurisdiction of the Authority. Therefore, the Authority finds that the contention of the Respondent are not correct and cannot be accepted and the case laws referred by him are not relevant to the present case.

30. The Authority finds that, the Respondent has further contended that Sh. Sudhir Jain has filed complaint against his project 'The Sky Court' only on the issue of wrong charging of GST on the Preferential Location Charges collected by the Respondent and no allegation regarding the passing on the benefit of ITC was made against the Respondent. Therefore, the Standing Committee had no evidence against the Respondent based on which it had come to the conclusion that the allegation of the profiteering needed to be investigated. Thus, the reference by the Standing Committee was not in accordance with the CGST Rules.

31. In this regard, the Authority finds that, upon perusal of the complaint No. NAACMP62413 of Sh. Sudhir Jain, it is observed that in reply to the column 'General information about the Supplier who has not passed on the benefit', Sh. Sudhir Jain has specified the name of M/s DLF Ltd. i.e. the Respondent having address DLF Gateway Tower, R Block, DLF City Phase III, Gurugram-122002, Haryana as the supplier who has not passed on the benefit of ITC. Further, upon perusal of the Minutes of meeting of the Standing Committee on Anti-profiteering held on 05.07.2019, the Standing Committee on Anti-profiteering has found that the complaint of Sh. Sudhir Jain has been considered in its meeting and there was sufficient and necessary prima facie evidence of profiteering against the Respondent. Thus, upon being prima facie satisfied, the Standing Committee has forward the complaint to the DGAP for further

investigation. Hence, the Authority finds that this contention of the Respondent being not tenable.

32. The Respondent has also argued that he had not been provided any opportunity of hearing by the Standing Committee to present his case which is gross violation of the principles of natural justice.

33. The Authority finds that, with respect to the above contention of the Respondent, that the procedure of the Standing Committee on Anti-Profiteering has been provided under Rule 128 of the CGST Rules, 2017. Under the above said Rule there isn't any provision of granting personal hearing to the Respondent while forwarding the complaint to the DGAP for investigation. The Standing Committee on Anti-Profiteering on being prima facie satisfied has forwarded the complaint to the DGAP for further investigation. Therefore, the claim of the Respondent is not correct and is not tenable.

34. The Respondent has submitted that in the present proceedings, he has not been issued show cause notice proposing the action to be taken by this Authority. The Report consequent to investigation by the DGAP was neither a show cause notice nor could it be treated as substitute to a show cause notice. This Authority should have issued a notice that should contain the description of the goods and services in respect of which the proceedings have been initiated, grounds / reasons on the basis of which profiteering has been alleged, issues proposed to be examined by this Authority and action proposed to be taken by this Authority against the Respondent invoking applicable statutory provisions.

35. The Authority finds that, the above contention made by the Respondent not correct. Perusal of Rule 129(6) of the CGST Rules, 2017 makes it clear that the DGAP shall complete the investigation within the prescribed time limit and upon completion of the investigation, furnish a report of its findings alongwith the relevant records to this Authority. In the present case, the DGAP after detailed investigation has submitted his Report dated 16.12.2021 to this Authority. On receipt of the above Report of the DGAP, this Authority has carefully considered the allegations made against the Respondent and issued show cause notice dated 02.03.2022 to the Respondent vide which the Respondent was directed to explain why the Report of the DGAP should not be accepted and his liability for the profiteering should not be determined under Section 171 of the Act. The Report of the DGAP was also supplied to the Respondent along with all the annexures. The Respondent was also given opportunity to file his consolidated written submissions against the allegations levelled by the DGAP in his report vide the above show cause notice dated 02.03.2022. 'The description of the goods and services' and 'the grounds/reasons on the basis of which profiteering has been alleged' have also been mentioned in the report of the DGAP and the same has been supplied to the Respondent. Hence, there is no need to issue separate show cause notice to the Respondent on the above grounds. The Respondent cannot claim that he should be served with the notice containing details of every flat buyer, the amount paid by him, the ITC and tax paid by him every


month etc. He has been supplied with all the material/documents which have been relied upon by the DGAP while framing the Report and hence he has no ground to allege violation of principles of natural justice. Hence, the Authority finds that, this submission and objection of the Respondent is devoid of merit.

36. The Respondent has argued that in absence of prescribed method of calculation of profiteering in the Act or the Rules or the Procedure and Methodology, the proceedings are arbitrary and liable to be set aside. The Procedure and Methodology issued by the Authority on 19.07.2018 only provided the procedure pertaining to investigation and hearing. However, no method/formula had been notified/prescribed pertaining to calculation of profiteering amount. In the absence of the same, there was lack of transparency and the results could vary from case to case resulting in arbitrariness and violation of Article 14 of the Constitution of India. He has further contended that there was no defined procedure being adopted by the Authority leading to arbitrariness. Thus, there ought to have been a standard methodology to determine the profiteering for real estate sector. To support his claim, the Respondent has relied upon the case of ***Samsung (India) Electronics Pvt. Ltd. vs. Commissioner of Commercial Taxes U.P. Lucknow***, reported at 2018[11] ***G.S.T.L. 367*** and ***Union of India vs. Suresh Kumar Bansal*** reported at 2017 (4) ***G.S.T.L. J128 (S.C.)***. rr

37. The Authority finds that, the above contention of the Respondent is without substance as 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.”* The Authority finds that, it is clear from the plain reading of the above provision that it mentions “reduction in the rate of tax or benefit of ITC” which means that if any reduction in the rate of tax is ordered by the Central 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. 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 them equally. 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. 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. 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. 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. Similarly, 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. However, 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. 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. 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. 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. The above provisions also reflect that the true intent behind the above provisions, made by the Central and the State legislatures in their respective GST Acts, is to pass on the above benefits to the common buyers who bear the burden of tax and who are unorganised, voiceless and vulnerable. 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 tax reduction and computation of the profiteered amount. This Authority was under no obligation to provide the same to the Respondent. The Respondent cannot deny the benefit of tax reduction 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 tax reduction and the profiteered amount. Therefore, the Authority finds

that the above plea of the Respondent cannot be accepted. Further, with respect to the case i.e. **Commissioner of Income Tax v. B. C. Srinivas Shetty**, it is mentioned that under Section 171 (1) no tax has been imposed and hence no computation provisions mentioned in the above case are required to be made. Hence, the law settled in the cases relied upon by the Respondent is not applicable in the present case.

38. The Respondent has also submitted that on the issue of prescribing a methodology, a useful recourse could be made to the analogous anti-profiteering provisions in Malaysia where statutorily methodology has been prescribed for the determination of the price. In this regard, the Authority finds that in the above mentioned Country the anti-profiteering measures introduced at the time of implementing the GST had prescribed methodology to determine prices whereas no such provision has been made in this country under Section 171 as it would be hit by Article 19 (1) (g). Moreover, the Government of Malaysia has already withdrawn the GST and the anti-profiteering measures as they were not working properly in that Country. Hence, the Authority finds that the above submissions of the Respondent are not tenable.

39. The Authority finds that, the Respondent has also contended that comparison of ITC to Turnover for per-GST and post-GST period is not the correct mechanism for calculation of profiteering amount as this formula for calculating the benefit of additional ITC would never yield the correct quantum of profiteering. There was no correlation


between turnover and the cost of construction or development of a project. The turnover reflected the amount collected by developer as per payment or booking plans issued by it which was purely based on market driven strategy. Accrual of ITC was not dependent on the amount collected from the buyers. In this industry, there might be cases where advance was received by the suppliers/dealers even before the commencement of the projects. Likewise, units might be sold after the completion of the project as well. Thus, receiving of inputs/input services and taking credit of the same did not have any immediate/direct relation with the turnover in real estate sector. Accordingly, calculating profiteering on the basis of turnover could not reflect the correct outcome of benefit of credit to the Respondent.

40. In relation to the above submission of the Respondent, the Authority finds that there is correlation between the Turnover and the cost of construction as the Respondent is raising demands on the basis of the completion of each stage of the development of the project. The raising of demand has no correlation with the market driven strategies of the Respondent as is evident from his 3 plans which he is offering to his buyers. Accordingly, the Respondent is earning ITC on the basis of the material purchased by him for each stage. Even if he has received advances from the buyers, he is applying the same to purchase material as per the development plan circulated by him to the buyers. The Respondent is also liable to pass on the benefit of ITC in case he sells the flats before receiving the Completion Certificate. Therefore, the Authority finds that the

above contention is wrong and accordingly, the comparison of the ratios for passing on the benefit of ITC is correct as per the provisions of Section 171 of the CGST Act, 2017.

41. The Respondent has further contended that the method of comparison of ITC to Turnover for per-GST and post-GST period used for calculation of profiteering would result in incorrect computation of the benefit of ITC as the construction project life cycle effect had been ignored and it had been assumed that uniform expenses were incurred throughout the lifecycle of the project.
42. In relation to the above submission of the Respondent, the Authority finds that, the calculation of profiteering amount has to be done on the basis of ITC earned by the Respondent and the price realised by him from the flat buyers every month as he is utilizing ITC for discharging his output tax liability every month. It has nowhere been presumed that the Respondent will incur uniform expenses throughout the life of the project. Therefore, the claim made by the Respondent is not correct and cannot be accepted.
43. The Respondent has also contended that the turnover would vary as per the market conditions and it was difficult to maintain the ratio of the same in the proportion to procurement in a real estate sector. With regard to this contention of the Respondent, the Authority finds that there is no ground to claim that the Turnover would vary as per the market conditions as the Respondent is raising demands as per the stage of the completion of the project and not as per the market conditions.

44. The Respondent has further averred that ITC is an absolute number which would vary as per the Govt. rate policies and a lot of goods had been moved from 28% to 18% slab. In this connection, the Authority finds that there is no effect of the reduction in rate of tax from 28% to 18% as the benefit of ITC is to be calculated on the additional ITC which has accrued to the Respondent in the post-GST period. Hence, the contention of the Respondent is not tenable and cannot be accepted.
45. The Authority finds that, it has also been claimed by the Respondent that reversal of ITC due to receipt of Completion Certificate also had a bearing on ITC availed by the developer and such a critical factor needed to be given appropriate weight while making the final computation of profiteering. However, the DGAP had added back such reversal without adding any reasons for such addition. In this regard, the report of the DGAP is very clear on the issue of reversal of ITC. The issue of reversal of ITC has been duly taken care of in Para 16 of the DGAP's Report which clearly states that no ITC benefit is to be passed on the unsold units and the ITC earned on them is to be reversed. Therefore, the claim of the Respondent is not sustainable.
46. The Respondent has also averred that in the pre-GST regime, services were subject to Service Tax @15%; however, the said services were taxable @18% in the post-GST regime. Therefore, there was an increase of 3% in ITC available to the Respondent which was not due to any additional benefit due to increase in the

rate of tax. This credit was available to the Respondent even before GST and hence, the Respondent could not be asked to transfer this additional credit to the customers. In this context, it is to state that the change in rate of tax in Service Tax from 15% to 18% is an additional benefit which has accrued to the Respondent in the post-GST period which is required to be passed on to the flat buyers. The Respondent cannot be allowed to appropriate it illegally as it has been given from the public exchequer. The Respondent has not paid even a single penny from his account and therefore, he cannot claim not passing on the benefit of additional ITC to the buyers as he has used the same in discharging his output tax liability. 

47. The contention of the Respondent that difference in the rate of GST was leading to change in ITC to turnover ratio, which would change the benefit of ITC is incorrect as difference in the rate of GST has no connection with the calculation of the profiteered amount.
48. The contention of the Respondent that the benefit should be calculated on the basis of the tax rates prevailing in the pre GST regime is incorrect as the additional benefit has to be computed on the basis of the amount of ITC which he has earned in the post-GST period as compared to the pre-GST period.
49. The Respondent has also averred that the method for computing the benefit of ITC by comparing the credit to turnover ratio is not correct and that the credit to turnover ratio may vary in the same regime itself. The percentage of credit to turnover (in the GST regime) in the his case also had varied from 1.84% (for the project

"The Camellias") to 17.46% (for the project "The Ultima"). The Respondent has also contended that the percentage of credit to turnover ratio (in GST regime) has varied from 0.2% (in Vatika Limited, Case No. 64/2019) to 20.98% (in Emaar MGF Land Ltd, Case No. 26/2020).

50. In relation to the above submission of the Respondent, the Authority finds that 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. 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 as is clear from the ratios calculated in respect of all the 03 projects of the Respondent. Since, the facts in the case of M/s Vatika Limited, Case No. 64/2019) and M/s Emaar MGF Land Ltd, (Case No. 26/2020) are different, the ratio of ITC to Turnover has also been different in both the cases. Hence, the contention of the Respondent cannot be accepted.

51. It has also been contended by the Respondent that for the purpose of calculation of profiteering, the value of land needed to be excluded. As 1/3rd of the total amount charged was towards land and not towards the services provided by Respondent. In this regard, the Respondent has placed reliance on the Order of this Authority passed in the case of **M/s. Fusion Buildtech Pvt. Ltd.** and **M/s. Bhartiya City Developers Pvt. Ltd.** In the cases relied upon by the Respondent, the DGAP has excluded the value of land from its profiteering calculation Table and the same was upheld by this Authority. It is further contended that if the land value be excluded from the calculation of profiteering, the profiteering amount would reduce to Rs. 16,72,72,250/-.

52. With respect to the above submission of the Respondent, 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 pervuew 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.

53. The Respondent has also contended that the DGAP has incorrectly inflated the profiteered amount by adding 12% GST to the base price demanded by the Respondent as the same has been paid to the Government exchequer. The Respondent has also relied upon the case of ***R.S. Joshi, Sales Tax Officer, Gujarat v. Ajit Mills Limited*** reported at (1977) 4 SCC 98. Hence, an amount of Rs. 2,38,83,040/- that has been paid to the Government exchequer, should be reduced from the total amount of profiteering.

54. The Authority finds that the above contention raised by the Respondent is not correct. The Authority finds that the Respondent has not only collected excess base prices from the customers which they were not required to pay due to the reduction in the rate of tax but he has also compelled them to pay additional GST on these excess base prices which they should not have paid. The Authority finds that, 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 rate reduction to the general public. The Authority finds that, 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. The Authority finds that, 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. Therefore, the Authority finds that the above contention of the Respondent is untenable and hence it cannot be accepted. In support of his above claim, the Respondent has relied upon the decision given by the Hon'ble Apex Court in the case of ***R. S. Joshi Sales Tax Officer Gujarat v. Ajit Mills Limited (1977) 4 SCC 98***. However, keeping in view the facts of the present case before us, the Authority finds that the law settled in the decision relied upon by the Respondent is not applicable to the Respondent.

55. The Respondent has further averred that for computation of credit to turnover ratio, the DGAP had considered period from 01.07.2017 to 30.11.2020 whereas he has received the Completion Certificate in all his three projects i.e. The Camellias, The Crest, The Ultima (Tower E, H, J, K, L & EWS) and The Ultima (Tower- A, B, N, Q, R & Shops) on 27.07.2017, 24.07.2017, 11.06.2018 and 05.02.2019 respectively, which is against the directions of this Authority vide its I.O. dated 11.12.2020.

56. In relation to the above submission of the Respondent, the Authority finds that the DGAP in Para 9 of his Report has made it clear that the Respondent in his submissions dated 12.12.2021 has confirmed that in respect of the payment plans the customers have opted for payment plans as per their convenience and same will be mixed. The Authority finds that, since the Occupation Certificates

have been received in respect of all the three project by the Respondent but the nature of agreements as claimed by the Respondent were linked with the construction plan as well as payment plan i.e. mixed, the investigation has been carried out up to the period from 01.07.2017 to 30.11.2020 and not upto the date of receipt of the Occupation Certificate in the respective projects, therefore, the Authority finds that the investigation has been correctly done by the DGAP. Accordingly, the Authority finds that the contention of the Respondent is not correct and the period of investigation i.e. from 01.07.2017 to 30.11.2020 has been correctly considered by the DGAP.

57. The Respondent has also contended that the DGAP has erred in considering the same area under pre-GST period as well as GST period on both sides while comparing the profiteering which has resulted in wrong calculation of percentage of profiteering. With respect to the this contention of the Respondent, the Authority finds that the 'Total Saleable Area' is fixed and hence it cannot be changed. While computing the pre and post GST ratio of CENVAT/ITC to Turnover, figure of 'Sold Area relevant to the Turnover' has been considered. This 'Sold Area Relevant to Turnover' is the area in respect of which the Respondent has received consideration from the buyers/customers in both the regimes i.e. pre-GST and post-GST. To determine the value of 'ITC proportionate to the Sold Area', the amount of 'Sold Area relevant to Turnover' is required. If the figure of 'Sold Area relevant to Turnover'


is ignored, the exact quantum of 'ITC proportionate to the Sold Area' could not be determined, which is further required for the calculation of the 'Ratio of the CENVAT/ITC to Turnover'. The difference in the 'Ratio of the CENVAT/ITC to Turnover' in the pre-GST and post-GST regime determines whether there is any profiteering or not. Therefore, the Authority holds that this contention of the Respondent is not maintainable and cannot be accepted.

58. The Respondent has also claimed that he has passed on the benefit of ITC amounting to Rs. 17,13,88,832/- to all the flat buyers in respect of all the three projects. In this regard, this Authority observes that the above claim of the Respondent is not correct. To support his claim, the Respondent has not submitted any documentary evidence indicating that the benefit of additional ITC has been passed on by him to his flat buyers/customers. The Respondent has submitted a mere excel sheet containing details of the flat buyers and the amount of benefit which was passed on in support of his claim, which cannot be relied upon in the absence of documentary evidence.

59. The Respondent has further stated that in the absence of a judicial member, the constitution of this Authority is improper. In this regard, the Hon'ble Supreme Court has applied the principle laid down in the case of ***S. P. Sampath Kumar v. Union of India & others 1987 SCC Sppl. 734***, including in the relatively recent cases of ***Union of India v. R. Gandhi***, ***Madras Bar Association v. Union of India supra*** and more recently in ***Roger Mathews v. South Indian***

Bank & Ors. Supra, in which it was held that that the Tribunals which were required to discharge those functions which were earlier being discharged by the Courts should have Judicial Members. In the case of **R. Gandhi supra**, the Hon'ble Supreme Court was dealing with the challenge to the constitution of the NCLT/NCLAT under the provisions of the Companies Act, 1956. It was inter-alia, held by the Hon'ble Court as follows:-


*"90. But when we say that the legislature has the competence to make laws, providing which disputes will be decided by courts, and which disputes will be decided by Tribunals, it is subject to constitutional limitations, without encroaching upon the independence of the judiciary and keeping in view the principles of the rule of law and separation of powers. **If Tribunals are to be vested with judicial power hitherto vested in or exercised by courts, such Tribunals should possess the independence, security and capacity associated with courts.....** Therefore, when transferring the jurisdiction exercised by courts to Tribunals, which does not involve any specialised knowledge or expertise in any field and expediting the disposal and relaxing the procedure is the only object, a provision for technical members in addition to or in substitution of judicial members would clearly be a case of dilution of and encroachment upon the independence of the judiciary and the rule of law and would be unconstitutional."*



(Emphasis supplied)

In the case of ***Madras Bar Association supra***, the Hon'ble Supreme Court was considering the constitution/composition of the National Tax Tribunal. It was held by the Hon'ble Supreme Court as follows:-

"113.2. The power of discharging judicial functions which was exercised by members of the higher judiciary at the time when the Constitution came into force should ordinarily remain with the court, which exercised the said jurisdiction at the time of promulgation of the new Constitution. But the judicial power could be allowed to be exercised by an analogous/similar court/Tribunal with a different name. However, by virtue of the constitutional convention while constituting the analogous court/Tribunal it will have to be ensured that the appointment and security of tenure of Judges of that court would be the same as of the court sought to be substituted.... it is not possible for us to accept that under recognised constitutional conventions, judicial power vested in superior courts cannot be transferred to coordinate courts/Tribunals. The answer is, that such transfer is permissible. But whenever there is such transfer, all conventions/customs/practices of the court sought to be replaced have to be incorporated in the court/Tribunal created. The newly created court/Tribunal would have to be established in consonance with the salient characteristics and standards of the court which is sought to be substituted."



(Emphasis supplied)

In the case of **Roger Mathew supra**, the Hon'ble Court was inter alia considering provisions of the Finance Act, 2017 which led to merger of several Tribunals as well as the rules therein, where one of the issue was absence of a Judicial Member. With regard to this question, the relevant findings of the Hon'ble Court are reproduced herein below:-

*"163. We concur with the above which reiterates the consistent view taken by this Court in a number of cases. **It is also a well-established principle followed throughout in various other jurisdictions as well, that wherever Parliament decides to divest the traditional Courts of their jurisdiction and transfer the lis to some other analogous Court/Tribunal, the qualification and acumen of the members in such Tribunal must be commensurate with that of the Court from which the adjudicatory function is transferred.** Adjudication of disputes, which was originally vested in Judges of Courts, if done by technical or non-judicial member, is clearly a dilution and encroachment on judicial domain. With great respect, Parliament cannot divest judicial functions upon technical members, devoid of the either adjudicatory experience or legal knowledge."*

(Emphasis supplied)

The decision in the case of **Namit Sharma v. Union of India (2013) 1 SCC 745** is also instructive, where the Hon'ble Supreme Court was considering the requirement of a judicial mind for performing the

functions and exercising the powers of the Chief Information Commission. The Hon'ble Court had originally held that the Information Commissions and the Central Information Commission performed judicial functions having the trappings of a Court and hence, they must have Judicial Members. It was further held that the legislative requirement that members have knowledge and experience in their respective fields, including law, pre-supposed the requirement of a basic degree in the said field. Relevant portions of the original Judgment are reproduced herein below:-

"82. Once it is held that the Information Commission is essentially quasi-judicial in nature, the Chief Information Commissioner and members of the Commission should be the persons possessing requisite qualification and experience in the field of law and/or other specified fields. We have discussed in some detail the requirement of a judicial mind for effectively performing the functions and exercising the powers of the Information Commission.


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87. The various provisions of this Act are clear indicators to the unquestionable proposition of law that the Commission is a judicial Tribunal and not a ministerial Tribunal. It is an important cog in and is part of court attached system of administration of justice unlike a ministerial Tribunal which is more influenced and controlled and performs functions akin to machinery of administration.

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95. The term “experience in law” is an expression of wide connotation. It presupposes that a person should have the requisite qualification in law as well as experience in the field of law. However, it is worthwhile to note that having a qualification in law is not equivalent to having experience in law and vice versa. “Experience in law”, thus, is an expression of composite content and would take within its ambit both the requisite qualification in law as well as experience in the field of law....”

Some findings of the Hon'ble Supreme Court in the case of **Namit Sharma supra**, reproduced herein above, have been reversed by the Hon'ble Court in the Review Petition filed by the Union of India. The Judgment in the review Petition has been reported as **Union of India v. Namit Sharma (2013) 10 SCC 359**. The relevant findings from the said judgment are reproduced herein below:-



“29. Once the Court is clear that the Information Commissions do not exercise judicial powers and actually discharge administrative functions, the Court cannot rely on the constitutional principles of separation of powers and independence of judiciary to direct that the Information Commissions must be manned by persons with judicial training, experience and acumen or former Judges of the High Court or the Supreme Court. The principles of separation of powers and independence of judiciary embodied in our Constitution no

doubt require that judicial power should be exercised by persons with judicial experience, training and acumen. For this reason, when judicial powers vested in the High Court were sought to be transferred to the Tribunals or judicial powers are vested in the Tribunals by an Act of the legislature, this Court has insisted that such Tribunals be manned by persons with judicial experience and training, such as High Court Judges and District Judges of some experience.

30.... *But, as we have seen, the powers exercised by the Information Commissions under the Act were not earlier vested in the High Court or subordinate court or any other court and are not in any case judicial powers and therefore the legislature need not provide for appointment of judicial members in the Information Commissions.*

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31. *Perhaps for this reason, Parliament has not provided in Sections 12(5) and 15(5) of the Act for appointment of persons with judicial experience and acumen and retired Judges of the High Court as Information Commissioners and retired Judges of the Supreme Court and Chief Justice of the High Court as Chief Information Commissioner and any direction by this Court for appointment of persons with judicial experience, training and acumen and Judges as Information Commissioners and Chief Information Commissioner would amount to encroachment in the field of legislation.....”*

(Emphasis supplied)

As this Authority has not assumed any jurisdiction, which was hitherto being exercised by the High Court or any other judicial body, the principle that there must be a Judicial Member laid down in certain decisions does not apply to the composition of this Authority.

As stated in Section 171 (2) of the CGST Act, 2017, the role of this Authority is "to examine whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him." The duties of this Authority have been further elaborated in Rule 127 of the CGST Rules, 2017 which reads as follows:-



"127. Duties of the Authority.- It shall be the duty of the Authority,-

(i) to determine whether any reduction in the rate of tax on any supply of goods or services or the benefit of input tax credit has been passed on to the recipient by way of commensurate reduction in prices;

(ii) to identify the registered person who has not passed on the benefit of reduction in the rate of tax on supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices;

(iii) to order,

(a) reduction in prices;

(b) return to the recipient, an amount equivalent to the amount not passed on by way of commensurate reduction in prices along with interest at the rate of eighteen percent. from the date of collection of the higher amount till the date of the return of such amount or recovery of the amount not returned, as the case may be, in case the eligible person does not claim return of the amount or is not identifiable, and depositing the same in the Fund referred to in section 57;

(c) imposition of penalty as specified in the Act; and

(d) cancellation of registration under the Act.

(iv) to furnish a performance report to the Council by the tenth day of the close of each quarter.”


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The aforementioned duties clearly do not involve settling of any question of law and these are the expert functions being discharged by the domain experts who have experience in the field of indirect taxation. Therefore, the sequitur of the discussion above is that (a) this Authority has not replaced or substituted any function which the Courts were exercising hitherto (b) it was performing quasi-judicial functions but it cannot be equated with a judicial Tribunal (c) it performs its functions in a fair and reasonable manner in accordance with the Act but does not have the trappings of a Court and (d) absence of a Judicial Member does not render the constitution of this Authority unconstitutional or legally invalid.

Further, there are several statutory bodies which exercise quasi-judicial functions but they are not required to be composed of Judicial Members. There is no Judicial Member in the SEBI which has been constituted under the Securities and Exchange Board of India Act, 1992. Neither the statute nor any decision of the Court requires the SEBI to be composed of a Judicial Member simply because it also performs quasi-judicial functions under the Act apart from its other roles. SEBI's composition has been provided in Section 4 (1) of the aforementioned Act. The Hon'ble Supreme Court in the case of ***Clariant International Ltd. & Anr. v. Securities and Exchange Board of India (2004) 8 SCC 524*** has held that SEBI exercises its legislative power, executive power and judicial power:-

"77. The Board exercises its legislative power by making regulations, executive power by administering the regulations framed by it and taking action against any entity violating these regulations and judicial power by adjudicating disputes in the implementation thereof."

Similarly, the TRAI which also performs quasi-judicial functions has been constituted under the Telecom Regulatory Authority Act, 1997 but does not have a Judicial Member. Section 3 of the said Act provides for the composition of the Authority. Again, the Medical Council of India has been constituted under the Indian Medical Council Act, 1956. The various disciplinary powers which it exercises under the Act can be said to be quasi-judicial in nature but it does not require a Judicial Member in its Council. The constitution and

composition of the Council is provided in Section 3 of the said Act. The Institute of Chartered Accountants of India has been constituted under the Chartered Accountants Act, 1949. The ICAI also exercises quasi-judicial functions over its registered members and can pass orders which have far reaching consequences affecting the rights of Chartered Accountants but even its composition does not require a Judicial Member's presence. Its composition is provided in Section 9 (2) of the above Act and the same does not include a mandatory Judicial Member. 

Similarly, the Assessing Officers, Commissioners of Appeal under the Income Tax Act, 1961 and the CGST Act, 2017, the Authorities on Advance Rulings under both the above Acts and the Dispute Resolution Panel under the Income Tax Act, 1961 all perform quasi-judicial functions but there is no requirement that such persons who must be possessing either a law degree or have had judicial experience. Such a requirement is not only impractical but would also render several statutory authorities unworkable, which could never have been the intention of the Hon'ble Supreme Court while laying down the legal principles discussed above.

Therefore, in light of the above, it can be concluded that this Authority has not replaced any Courts, cannot be equated to a Court or a Tribunal and hence the mandate of having a Judicial Member cannot be said to apply to this Authority.

It is also submitted that this Authority has been constituted as per Section 171 (2), 171 (3) read with Rule 122 of the CGST Rules,

2017. The said Act or the Rules, nowhere mention requirement of a Judicial Member in this Authority. The Parliament, the State legislatures, the Central and the State Government as well as the GST Council in their wisdom, have not found it expedient to constitute this Authority by providing a Judicial Member in this Authority. Hence, the allegations made by the Respondent regarding the unconstitutionality of the Authority are devoid of any legal merit. Moreover, the orders passed by this Authority are subject to judicial review and hence no prejudice would be caused to the Respondent. Hence, the above contention of the Respondent is grossly misplaced and hence, it cannot be accepted.

60. The Authority notes that it has also been alleged by the Respondent that Section 171 of the CGST Act and Rules made thereunder pertaining to anti-profiteering are unconstitutional being violative of Article 14 and Article 19(1)(g) of Constitution of India. In this connection it would be correct to point out that this Authority 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. 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 and therefore, there is no violation of Article 14 and 19 (1) (g) of the Constitution.

61. The Respondent has further contended that Rule 122, 127 & 133 of the CGST Rules suffered from excessive delegation. In this regard it would be pertinent to mention that above mentioned CGST Rules have been framed by the Central Government under Section 164 on the recommendation of the GST Council which is a constitutional body established under 101st Amendment of the Constitution and comprises of all the Finance/Taxation Ministers of the States and the Union Finance Minister. Hence, the above Rules have express approval of the Parliament, all the State Legislatures, the Central and all the State Governments and the GST Council and therefore, constitution of this Authority under above Rules is legal and does not

amount to excessive delegation. It is also mentioned that the Rule 122 only prescribes the qualifications of the members of the Authority whereas its constitution has been duly provided in Section 171 (2). Further it has been specifically provided in Section 171 (3) that "*The Authority referred to in sub-section (2) shall exercise such powers and discharge such functions as may be prescribed.*" and hence, the functions and powers conferred on this Authority under Rule 127 also have mandate of the Parliament, the State Legislatures, the Central and the State Governments as well as of the GST Council and hence the conferring of powers and functions under the above Rules on this Authority does not tantamount to excessive delegation.

62. It is clear from the plain reading of Section 171 (1) mentioned above that it deals with two situations one relating to the passing on the benefit of reduction in the rate of tax and the second pertaining to the passing on the benefit of the ITC. On the issue of reduction in the tax rate, it is apparent from the DGAP's Report that there has been no reduction in the rate of tax in the post GST period; hence the only issue to be examined is as to whether there was any net benefit of ITC with the introduction of GST. On the issue of reduction in the tax rate, it is apparent from the DGAP's Report that there has been no reduction in the rate of tax in the post GST period; hence the only issue to be examined is as to whether there was any net benefit of ITC with the introduction of GST. On this issue it has been revealed from the DGAP's Report that the ITC as a percentage of the turnover that was available to the Respondent during the pre-GST period

(April-2016 to June-2017) was 0.67%, 2.64% & 2.45% and during the post-GST period (July-2017 to November-2020), it was 1.84%, 14.40% & 17.46% for the projects 'The Camellias', 'The Crest' and 'The Ultima' respectively. This confirms that, post-GST, the Respondent has been benefited from additional ITC to the tune of 1.18% (1.84% - 0.67%), 11.76% (14.40% - 2.64%) and 15.01% (17.46% - 2.45%) of his turnover for the projects 'The Camellias', 'The Crest' and 'The Ultima' respectively 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 flat buyers as Rs. 7,23,50,135/-, Rs. 12,94,35,170/- & Rs. 4,91,23,070/- for the projects 'The Camellias', 'The Crest' and 'The Ultima' respectively which was availed by the Respondent the details of which are mentioned in Table- B, D & F supra.

63. In view of the above discussions, the Authority finds that the Respondent has profiteered by an amount of Rs. 7,23,50,135/-, Rs. 12,94,35,170/- & Rs. 4,91,23,070/- for the projects 'The Camellias', 'The Crest' and 'The Ultima' respectively during the period of investigation i.e. 01.07.2017 to 30.11.2020. The above amount that has been profiteered by the Respondent from his home buyers in all the above three projects shall be refunded by him, along with interest @18% thereon, from the date when the above amount was profiteered by him till the date of such payment, in line with the provisions of Rule 133 (3) (b) of the GCST Rules 2017.

64. The Authority finds no reason to differ from the above-detailed computation of profiteering in the DGAP's Report or the methodology adopted and hence, the Authority determines the profited amount for the period from 01.07.2017 to 30.11.2020, in the instant case, as Rs. 7,23,50,135/-, Rs. 12,94,35,170/- & Rs. 4,91,23,070/- for the projects 'The Camellias', 'The Crest' and 'The Ultima' respectively. This Authority under Rule 133 (3) (a) of the CGST Rules, 2017 orders that the Respondent shall reduce the prices to be realized from the buyers of the flats/shops commensurate with the benefit of ITC received by him as has been detailed above.
65. The Respondent is also liable to pay interest as applicable on the entire amount profited, i.e. Rs. 7,23,50,135/-, Rs. 12,94,35,170/- & Rs. 4,91,23,070/- for the projects 'The Camellias', 'The Crest' and 'The Ultima' respectively. Hence the Respondent is directed to also pass on interest @18% to the customers/ flat buyers/ recipients on the entire amount profited, starting from the date from which the above amount was profited till the date of passing on/ payment, as per provisions of Rule 133 (3) (b) of the CGST Rules 2017.
66. The complete list of homebuyers has been attached with this Order, with the details of amount of benefit of ITC to be passed along with interest @ 18% in respect of all the three projects 'The Camellias', 'The Crest' and 'The Ultima' of the Respondent as in the Annexure-1, 2 and 3 respectively.

67. We also order that the profiteering amount of Rs. 7,23,50,135/-, Rs. 12,94,35,170/- & Rs. 4,91,23,070/- for the projects 'The Camellias', 'The Crest' and 'The Ultima' respectively along with the interest @ 18% from the date of receiving of advance from the homebuyer 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 receipt of this order failing which it shall be recovered as per the provisions of the CGST Act, 2017.
68. It is also evident from the above narration of facts that the Respondent has denied benefit of ITC to the buyers of the flats and the shops being constructed by him in his projects 'The Camellias', 'The Crest' and 'The Ultima' 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. That Section 171 (3A) of the CGST Act, 2017 has been inserted in the CGST Act, 2017 vide Section 112 of the Finance Act, 2019, and the same became operational w.e.f. 01.01.2020. As the period of investigation was 01.07.2017 to 30.11.2020, therefore, he is liable for imposition of penalty under the provisions of the above Section. Accordingly, notice be issued to him.
69. The concerned jurisdictional CGST/SGST Commissioner is directed to ensure compliance of this Order. It may be ensured that the benefit of ITC is passed on to each homebuyer as per Annexure- 1, 2 & 3 attached with this Order along with interest @18%, if not paid already. In this regard an advertisement of

appropriate size to be visible to the public may also be published in minimum of two local Newspapers/vernacular press in Hindi/English/local language with the details i.e. Name of builder (Respondent) – M/s DLF Ltd., Project- 'The Camellias', 'The Crest' and 'The Ultima' Location- Haryana and amount of profiteering so that the concerned homebuyers can claim the benefit of ITC if not passed on. Homebuyers may also be informed that the detailed NAA Order is available on Authority's website www.naa.gov.in. Contact details of concerned Jurisdictional CGST/SGST Commissioner may also be advertised through the said advertisement.

70. The concerned jurisdictional CGST/SGST Commissioner shall also submit a Report regarding compliance of this order to this Authority and the DGAP within a period of 4 months from the date of receipt of this order.


71. Further, the Hon'ble Supreme Court, vide its Order dated 23.03.2020 in *Suo Moto Writ Petition (C) no. 3/2020*, while taking *suo-moto* cognizance of the situation arising on account of Covid-19 pandemic, has extended the period of limitations prescribed under general law of limitation or any other specified laws (both Central and State) including those prescribed under Rule 133(1) of the CGST Rules, 2017, as is clear from the said Order which states as follows:-



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

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

“The Order dated 23.03.2020 is restored and in continuation of the subsequent Orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general 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. 

72. A copy of this order be sent, free of cost to the DGAP, the Respondent, Commissioners CGST/SGST Haryana, the

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

Encl:-	
Annexure 1	Page 1 to 3
Annexure 2	Page 4 to 9
Annexure 3	Page 10 to 13

Sd/-
(Amand Shah)
Technical Member &
Chairman

Sd/-
(Pramod Kumar Singh)
Technical Member

Sd/-
(Hitesh Shah)
Technical Member

Certified copy



(Dinesh Meena)
NAA, Secretary

F. No. 22011/NAA/202/DLF/2020/Pt.II

5013-5019
Date:-13.05.2022

Copy To:-

1. M/s DLF Limited, DLF Gateway Tower, R Block, DLF City, Phase-III, Gurugram, Haryana-122002.
2. Director General Anti-Profitteering, Central Board of Indirect Taxes & Customs, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.
3. Commissioner Of Commercial Taxes, Vanijya Bhavan, Plot No. 1-3, Sector-5, Panchkula- 134 151.
4. The Commissioner, CGST Gurugram, Plot No. 36 & 37, Sector-32, Gurugram, Haryana-122001.
5. Principal Secretary to Govt. of Haryana, Town and Planning Department, Plot No. 3, Sec-18A, Madhya Marg, Chandigarh-160018.
6. Haryana Real Estate Regulatory Authority, New PWD Rest House, Civil Lines, Gurugram, Haryana.
7. NAA Website/Guard File.

ANNEXURE-1 LIST OF HOME BUYERS OF THE PROJECT 'THE CAMELLIAS'			
S. No.	Customer Name of the Project The Camellias	Unit Number	Amount of ITC to be passed on
1	GOPAL CHOPRA	CM405A	83,274
2	SANDEEP KUMAR	CM0916	1,328,245
3	RACHNA SAWHNEY	CM504A	83,450
4	RACHNA SAWHNEY	CM505A	83,450
5	NARESH KUMAR UPPAL	CM0917	998,577
6	ANIL SARIN	CM510A	99,874
7	DAVI SARIN	CM510B	99,874
8	SANJEEV AGGARWAL	CM819B	1,001,928
9	S J RUBBER INDUSTRIES LTD	CM504B	83,265
10	SPLENDID RESIDENCES PVT LTD	CM419A	11,328
11	RACHNA SAWHNEY	CM503A	83,450
12	VINEET KANWAR	CM418A	230,148
13	PRAMOD BHASIN	CM719A	129,496
14	VISHAL SWARA	CM516B	147,047
15	ATUL SINGH	CM822B	1,000,083
16	RAJIV KRISHAN LUTHRA	CM633A	1,015,465
17	AJAY VOHRA	CM409B	135,193
18	ANIL KUMAR AGGARWAL	CM0914	1,433,818
19	PRITAM DAS NARANG	CM315A	327,629
20	DEEPAK AGRAWAL	CM307B	135,369
21	MONICA BINDRA	CM635A	502,146
22	MOHAN AGARWAL	CM804B	2,066,050
23	VIVEK KRISHNA TANKHA	CM815A	1,821,072
24	SUPERIOR LANDCON PVT LTD	CM421A	1,248,731
25	SUPERIOR INFRAMANAGERS PVT LTD	CM827B	1,606,993
26	DILJINDERJIT SINGH RAKHRA	CM409A	1,768,077
27	YOGESH CHANDER DEVESHWAR	CM810B	2,567,092
28	JAI PERKASH JINDAL	CM402B	18,187
29	ANU JINDAL	CM402A	18,307

30	CHANDAN BHULLAR	CM304A	1,803,668
31	ANSHUL KAUSHIK	CM521B	1,981,517
32	CUTTING EDGE REALTY LLP	CM512A	2,011,977
33	NEELAM ARYA	CM0918	3,013,429
34	NEELAM ARYA	CM0919	3,013,552
35	KAVIN BHARTI MITTAL	CM0114	3,372,998
36	DEEP KALRA	CM818B	285,490
37	VRC LOGISTICS PVT LTD	CM637A	1,559,939
38	SANJAY SURANA	CM212A	1,993,776
39	SUNIL DUGGAL	CM834A	2,057,517
40	RAJIV MOHAN AGARWAL	CM636A	314,780
41	RAJSHRI YADAV	CM735B	1,847,550
42	GEETANJALI YADAV	CM736A	1,847,550
43	GARISH KUMAR NANDA	CM404A	491,378
44	N. SRIDEVI	CM832A	341,475
45	GLOCAL REALORS PVT LTD	CM401A	165,151
46	ASHWIN JULKA	CM817B	835,728
47	GAUTAM KUMRA	CM738A	1,024,664
48	HEMANT AGARWAL	CM733B	2,194,722
49	BALDEV KUMAR B VARMA	CM817A	2,097,628
50	MUKUL TAYAL	CM209A	1,701,515
51	MADYSON REAL ESTATE DEVELOPERS PVT. LTD	CM309B	164,994
52	TARANBIR SINGH	CM634A	256,914
53	ADITYA UMANG VIR	CM301A	935,957
54	NAVLEEN KOHLI	CM734B	2,216,474
55	JAGDEEP DHANKHAR	CM724B	3,595
56	GSG PROPERTIES PVT. LTD	CM812B	200,584
57	ANUJ KAPURIA	CM629A	54,800
58	PRANAV KAPURIA	CM628A	44,211
59	IMPERIAL AUTO INDUSTRIES LTD	CM738B	2,198,187
60	CHANDRIKA THATAI	CM825A	2,216,548

61	VRC LOGISTICS PVT LTD	CM637B	157,741
62	DALIP GULATI	CM731A	27,745
63	LOKESH MALHOTRA	CM316A	2,309,285
64	TANISHA INFO PVT LTD	CM704A	49,668
65	VIMAL ARORA	CM0921	1,463,153
66	BAR CODE INDIA LTD	CM712B	23,247
67	ANIL TANDON	CM202B	31,619
68	NAVEEN JAIN	CM203A	30,218
69	PRASHANT RATHEE	CM214A	41,178
70	SANDEEP KUMAR	CM803B	535,969
71	CHARU MUNJAL	CM222A	118,010
72	PANKAJ MUNJAL	CM222B	118,010
73	BINAYAK DUTTA	CM733A	71,723
74	MALVIKA RAI	CM603A	611,019
75	ACTION CONSTRUCTION EQUIPMENT LTD	CM602A	34,356
76	ACTION CONSTRUCTION EQUIPMENT LTD	CM602B	2,429,983
77	DLF HOME DEVELOPERS LTD	cm0908	817,689
78	DLF HOME DEVELOPERS LTD	CM0911	996,147
79	RAJEEV BAKSHI	CM722A	107,486
Total amount of ITC to be passed on			72,350,135

ANNEXURE-2 LIST OF HOME BUYERS OF THE PROJECT 'THE CREST'			
S. No.	Customer Name of the Project The Crest	Unit Number	Amount of ITC to be passed on
1	RAJIV SYAL	CTE172	356,085
2	AMRITA	CTE093	452,048
3	RAKESH KHANNA	CTE072	39,240
4	VIKAS BANSAL	CTE064	80,779
5	SUNIL DUGGAL	CTE261	23,258
6	ASHOK CHAWLA	CTE241	61,076
7	ASHISH GUPTA	CTE084	67,220
8	IMPERIAL LIFE SCIENCES PVT LTD	CTE042	317,581
9	KANT FINCAP PVT LTD	CTE074	67,186
10	MANINDER SINGH GREWAL	CTE202	724,076
11	JOYDEEP MUTSUDDI	CTE233	444,525
12	ARUN KUMAR BAKSHI	CTE232	357,722
13	RAMAN ARORA	CTE272	402,558
14	SONALI ARORA	CTE274	30,683
15	DEEPAK KUMAR BULANI	CTE104	282,847
16	POOJA KAPUR	CTB081	1,309,877
17	GOKUL KAUSHIK	CTE073	452,048
18	KEERTHAN ADYANTHAYA	CTE114	18,758
19	ANIL PERMOD MALIK	CTE094	156,574
20	ASHISH ANAT	CTE083	84,658
21	ATUL MARDIA	CTE183	169,994
22	SUNIL JAIN	CTE154	63,242
23	SRIRAM KHATTAR	CTE211	44,550
24	RAJ KUMAR	CTE123	67,324
25	SANJAY MADAN	CTE193	110,850
26	SUBHASH GOYAL	CTE263	92,879
27	ALKA YADAV	CTE223	495,109
28	H S OBEROI BUILDTECH PVT LTD	CTE013	65,873
29	SANJAY SINGH	CTE102	54,741

30	ALOK TEWARI	CTE264	365,232
31	SANDEEP BAJAJ	CTE062	40,555
32	RENU GUPTA	CTE231	45,137
33	KULBIR SINGH KHARABANDA	CTE112	351,596
34	KULBIR SINGH KHARABANDA	CTE113	446,616
35	KAVI MADAN	CTF253	159,309
36	MERIT EXIM PRIVATE LIMITED	CTE023	452,048
37	SABINA BAGGA	CTE161	32,141
38	MANU AHUJA	CTE191	76,464
39	SANJAY KUMAR	CTE151	32,154
40	ATUL KUMAR JAIN	CTE032	54,638
41	SIDDHANTA SHARMA	CTE092	54,626
42	MICRO LABS LTD	CTE143	406,338
43	RUPAK SAHA	CTE273	815,096
44	ARUN SONI	CTE152	383,791
45	PADMANABH SINHA	CTE043	442,100
46	SANDEEP UPPAL	CTE222	370,021
47	SHIKHA SHARMA CHATURVEDI	CTD244	477,448
48	KUNAL MANOHAR GOKLANI	CTD171	513,529
49	MANSI KAPOOR	CTD184	452,773
50	NEENA KAPOOR	CTD044	473,475
51	ROHIT CHOPRA	CTD114	485,441
52	RACHITA AWASTHI	CTD251	463,897
53	YASHI KANT	CTD151	415,416
54	RESHAM SINGH KOONER	CTD123	2,733,789
55	JYOTSANA ARORA	CTD231	463,104
56	SHWETA AGRAWAL	CTB334	868,867
57	RAHUL JOHRI	CTD234	480,807
58	MONINDER PAL SINGH	CTD224	455,538
59	SONAM GUPTA	CTD254	2,447,164
60	SALIL SWAROOP BHATNAGAR	CTD084	2,447,341
61	H S GREWAL	CTE212	413,616

62	DEEPIKA BATRA	CTD094	585,335
63	ABHINAV SINHA	CTD204	482,391
64	ATIMA MANKOTIA	CTD124	2,517,426
65	SAJAN KUMAR JAIN	CTD213	761,271
66	AMITA CHAWLA	CTD243	541,828
67	NISHA JAIN	CTD153	761,271
68	AMRESH MOHAN	CTD221	2,511,701
69	HEMANT KUMAR RUIA	CTD194	460,846
70	SAURABH PANDE	CTD174	435,360
71	SHREYA MUKARJI	CTA331	3,600,626
72	GAURAV KAPOOR	CTE171	376,910
73	ARCHANA WALIA	CTD214	530,301
74	SUNIL BEHARI MATHUR	CTD054	2,534,412
75	GURDEEP SINGH KOHLI	CTD074	482,845
76	SUNIL DASS MATHUR	CTD274	991,820
77	RAJENDRA KUMAR MADAN	CTA151	1,459,510
78	REALEST BUILDERS AND SERVICES PVT LTD	CTD181	2,604,140
79	REALEST BUILDERS AND SERVICES PVT LTD	CTD211	2,604,140
80	AGS BUILDTECH PVT LTD	CTD141	2,604,140
81	AGS BUILDTECH PVT LTD	CTD161	2,604,140
82	A S G REALCON PVT LTD	CTD121	2,604,140
83	A S G REALCON PVT LTD	CTD111	2,604,140
84	KANCHAN MEHRA	CTD191	2,604,141
85	NILESH GUHA	CTD091	472,844
86	KESHYAP C. JOSHI	CTE071	1,964,151
87	ANINDYA BOSE SHRIVASTAVA	CTD081	413,752
88	SHIVANI CHOPRA	CTD071	54,512
89	AKSHAY SHARMA	CTE224	2,506,608
90	JAI ARORA	CTD014	2,344,664
91	UDIT AGARWAL	CTD101	2,545,587
92	RAHUL KUMAR SHAW	CTD061	413,055
93	AJAY WADHWA	CTD261	409,826

94	VIJAY KUMAR WADHAWAN	CTD201	365,082
95	SANJIV MALHOTRA	CTD051	353,938
96	VINOD SOBTI	CTA063	3,013,891
97	RAJIV BHATNAGAR	CTA153	3,070,530
98	SUNITA SACHDEVA	CTE164	318,691
99	SUNIL KUMAR SAWHNEY	CTE234	325,514
100	TANUJA BINDRA	CTF141	320,763
101	SUMITRA ARORA	CTE004	278,658
102	KHC HEALTHCARE INDIA PVT LTD	CTE052	337,218
103	CHARAN SINGH	CTD252	1
104	CHARAN SINGH	CTD212	1
105	CHARAN SINGH	CTD172	1
106	CHARAN SINGH	CTD122	1
107	CHARAN SINGH	CTD082	1
108	CHARAN SINGH	CTD042	1
109	CHARAN SINGH	CTD012	2
110	CHARAN SINGH	CTD273	1
111	CHARAN SINGH	CTD253	1
112	CHARAN SINGH	CTD193	1
113	PRADEEP K GUPTA	CTD143	1
114	CHARAN SINGH	CTD073	1
115	CHARAN SINGH	CTD033	1
116	CHARAN SINGH	CTB041	1
117	CHARAN SINGH	CTB021	1
118	OM PARKASH	CTD271	2
119	OM PARKASH	CTD262	1
120	OM PARKASH	CTD222	1
121	OM PARKASH	CTD182	1
122	OM PARKASH	CTD142	1
123	OM PARKASH	CTD092	1
124	OM PARKASH	CTD052	1
125	OM PARKASH	CTD263	1

126	OM PARKASH	CTD203	1
127	OM PARKASH	CTD163	1
128	ROMA SATARA	CTD083	1
129	OM PARKASH	CTD043	1
130	OM PARKASH	CTB051	2
131	OM PARKASH	CTB031	1
132	OM PARKASH	CTB011	1
133	NARENDER YADAV	CTD272	1
134	NARENDER YADAV	CTD242	1
135	NARENDER YADAV	CTD202	1
136	NARENDER YADAV	CTD192	1
137	NARENDER YADAV	CTD162	1
138	NARENDER YADAV	CTD152	1
139	NARENDER YADAV	CTD112	1
140	NARENDER YADAV	CTD102	1
141	NARENDER YADAV	CTD072	1
142	NARENDER YADAV	CTD062	1
143	NARENDER YADAV	CTD032	1
144	NARENDER YADAV	CTD022	1
145	NARENDER YADAV	CTD233	1
146	NARENDER YADAV	CTD183	1
147	NARENDER YADAV	CTD113	1
148	NARENDER YADAV	CTD063	1
149	NARENDER YADAV	CTD053	1
150	NARENDER YADAV	CTD023	1
151	NARENDER YADAV	CTD013	1
152	NARENDER YADAV	CTB104	2
153	ARUN MAHESHWARY	CTB094	2
154	NARENDER YADAV	CTB084	2
155	NARENDER YADAV	CTB074	2
156	NARENDER YADAV	CTB064	2
157	VANDANA SACHDEVA	CTB054	2

158	SHILPA HANS	CTF162	2,182,223
159	SUJATA JAIN	CTF023	313,192
160	NITIN JAIN	CTF091	425,292
161	SHAUKAT KHAN	CTF073	366,046
162	ISHWAR P THAWANI	CTF204	4,949,375
163	RAJVIR SINGH RANA	CTF234	3,522,719
164	VIKRAM WAHIE	CTF124	1,376,434
165	MANU KAPOOR	CTF174	306,517
166	IRA MALHOTRA	CTF183	4,577,661
167	VIKRAM ANAND	CTF254	330,143
168	RAJEEV KUMAR KUMRA	CTF264	328,244
169	VARSHA JAIN	CTF104	328,628
170	RAHUL MITTRA	CTF154	4,840,324
171	RAHUL PURI	CTF164	329,323
172	NARBIR SINGH	CTF194	4,941,226
173	REBLON FILMS PVT LTD	CTA334	435,192
174	MAYA RAMACHANDRAN	CTF212	2,324,438
175	SHASHANK NARAYAN	CTF144	305,081
176	RITA AGGARWAL	CTF094	294,910
177	KARAN KHANNA	CTF114	329,870
178	SUMITRA ARORA	CTF054	49,344
179	DILBAGH SINGH NARANG	CTF063	343,209
180	KUMKUM SAXENA MODWEL	CTF224	3,433,401
181	PRAKASH CHANDRA AGARWAL	CTF084	4,995,876
182	MEKHLA DEWAN	CTF163	364,890
183	NAINA LAL	CTF151	370,525
184	SUSHIL BHATIA	CTF074	5,285,458
Total amount of ITC to be passed on			129,435,170

ANNEXURE-3 LIST OF HOME BUYERS OF THE PROJECT 'THE ULTIMA'			
S. No.	Customer Name of the project The Ultima	Unit Number	Amount of ITC to be passed on
1	SANGITA SETHI	UTK161	73,258
2	REKHA GUPTA	UTS071	136,943
3	CLASSIC EXPORTS	UTH161	426,417
4	RAVNEET KAUR SANDHU	UTK282	95,517
5	GUNEET KAUR PAINTAL	UTK281	95,517
6	RAJU VYAS	UTS263	125,833
7	DHANJIT VADRA	UTJ282	36,891
8	ADITYA CHOPRA	UTL121	742,734
9	SUBHASH CHAND GOEL	UTS041	137,126
10	BANAS MINERALS PRIVATE LIMITED	UTH212	293,627
11	ARVIND KUMAR SINGHATIYA	UTS021	119,808
12	NIKHIL KATHURIA	UTK182	153,102
13	SEEMA AGARWAL	UTJ081	499,306
14	VINOD KUMAR SINGH	UTS291	622,732
15	SANJAY GROVER	UTE214	206,214
16	ACHLA KAKRIA	UTE114	127,718
17	DIVAS VARSHNEY	UTE051	165,889
18	PRIYANKA MITTAL	UTE161	493,839
19	PRIYANKA MITTAL	UTE171	495,106
20	CAMA AUTOMOBILE PVT LTD	UTK092	430,580
21	PRANAV SURESH	UTE061	201,101
22	RUBY MATHUR	UTS184	142,192
23	JUHI JAIN	UTE083	181,257
24	SWARUP KUMAR	UTJ201	1,902,582
25	DEEPAK SRIVASTAVA	UTE303	8,832
26	ASHIT SUD	UTE243	109,134
27	SUMAN TRIPATHI	UTE042	2,695
28	BHARTI AGGARWAL	UTE012	4,283
29	SHARAD PRAKASH	UTE052	1,333

30	MRIDULA RUDRA	UTE072	2,831
31	VAIBHAV METHI	UTE032	659,362
32	RAMENDRA VERMA	UTE122	2,921
33	PALKI DHATARWAL	UTS073	142,384
34	PRADEEP CHOWBEY	UTE213	105,708
35	AMBA SHARMA	UTL122	191,413
36	BHAVESH GARG	UTE222	2,539
37	MANU DUA	UTE071	86,223
38	KARTIKEYA TRIPATHI	UTE062	2,660
39	DLF REAL ESTATE BUILDERS LTD	UTE074	1,427,480
40	DLF REAL ESTATE BUILDERS LTD	UTE172	1,136,456
41	DLF REAL ESTATE BUILDERS LTD	UTE182	1,490,092
42	JYOTI KHANNA	UTN303	260,653
43	SANDEEP VERMA	UTN162	137,837
44	AJAY SOOD	UTN172	137,837
45	PARAMJIT SINGH	UTN122	137,837
46	AAYUSHMAN GUPTA	UTN302	114,174
47	SAMIR MATHUR	UTE023	291,189
48	WOOJIN KIM	UTE291	183,785
49	SHALINI PRAKASH	UTS072	763,878
50	PUSHPA DAYAL	UTS214	135,513
51	NIRANJAN KUMAR	UTS123	147,196
52	ANSHUMAN SEHGAL	UTE174	1,095,724
53	MEENAKSHI MALHAN	UTE124	144,736
54	SAJAL GUPTA	UTS081	148,833
55	ANJALI SAPRA	UTE281	147,619
56	SAMIR CHAKRABORTY	UTE212	159,251
57	MEENAKSHI MALHAN	UTE103	98,476
58	MOHAMMAD JAMAL ILMI	UTS143	146,471
59	JEETENDRA KUMAR JAIN	UTE192	177,970
60	ADITYA MEHRA	UTS054	112,298
61	SUNNY MAKHNI	UTS301	137,657

62	GINNI MAKHNI	UTS274	137,546
63	HARJYOT SINGH KHURANA	UTE142	159,577
64	BHUPINDER SINGH JAGGI	UTJ141	132,997
65	DEEPALI KAURA	UTN211	1,065,520
66	ANSHUL MIDHA	UTN102	569,690
67	MUKUL JAIN	UTS092	95,848
68	MUKUL JAIN	UTS272	95,848
69	HIMANSHU JOSHI	UTE111	147,432
70	ARUN SINGHAL	UTN191	1,694,215
71	NEELES SH SURIYAVANSHEE	UTN091	557,903
72	VRS BUILDCON PVT LTD	UTE202	379,520
73	VRS BUILDCON PVT LTD	UTE063	396,484
74	VRS BUILDCON PVT LTD	UTS101	358,094
75	VRS BUILDCON PVT LTD	UTS213	358,267
76	LAXMAN KUMAR RAHEJA HUF	UTK201	136,276
77	SUKRITI AHUJA	UTN043	165,684
78	RAMESH CHANDRA GUPTA	UTE092	36
79	NIRMALA MALHOTRA	UTN064	165,640
80	RUCHIRA MEHROTRA	UTN022	1,163,920
81	KARTIKAY SAINI	UTK091	1,980,342
82	S P SRIVASTAVA	UTE304	135,647
83	ANUJ AGARWAL	UTS052	1,483,445
84	RENU CHHABRA	UTS304	103,887
85	PARUL TOMER	UTN111	1,612,324
86	BANOX EXIM (P) LTD	UTK211	138,349
87	SEEMA JOHRI	UTE292	152,860
88	PUNEET RASTOGI	UTS284	130,603
89	KRISHAN K CHAUDRY	UTS242	173,727
90	JAYANT KUMAR	UTS121	251,981
91	ARCHNA SEHRAWAT	UTR204	230,424
92	ARCHNA SEHRAWAT	UTR214	226,339
93	SANJAY WADHWA	UTS231	146,035

94	UMANG BHAMBRI	UTE154	1,524,875
95	DEEPMALA SINGH	UTL201	153,128
96	KUNJAL JAIN	UTK061	102,410
97	RUCHI MAHESHWARI	UTK071	102,308
98	PRAVEEN PRAFULLA JAKATE	UTK042	52,236
99	HARISH BANSAL	UTN112	26,433
100	PRIYANKA CHOPRA	UTN152	1,867,591
101	ANILA VARMA	UTS241	147,564
102	NAWAL SINGH	UTN222	10,006
103	SINCHAN MUKHERJEE	UTR171	1,765,981
104	RAMESH KUMAR VIJAY & OTHERS (HUF)	UTR241	1,400,958
105	AMIT MADAN	UTE022	145,097
106	AMIT MAHAJAN	UTR061	1,736,252
107	ADARSH KAUR	UTS221	147,436
108	MUKESH KHANDELWAL	UTR071	348,187
109	ANIL KUMAR	UTR261	4,407
110	ASHOK KUMAR BHASIN	UTN143	670,936
111	BHARATI AGARWAL	UTR121	114,879
112	SAURABH DASGUPTA	UTR051	44,790
113	MUNISH TULI	UTK031	2,030,033
114	ADARSH SHARAN	UTS244	131,774
115	MANJU MALHOTRA	UTH121	1,462,848
116	RUBAL KAPOOR	UTN203	1,367,348
117	M R SIBAL & SON (HUF)	UTS154	317,832
118	JITENDER MOHAN BATRA	UTN163	42,086
119	ASHOK KUMAR NARANG	UTL041	194,255
120	ASHOK KUMAR NARANG	UTL021	109,574
121	ROSHAN BASUR	UTN293	440,622
122	KARTIK GOGIA	UTR124	2,586
123	AMRISH SRIVASTAVA	UTE034	151,610
Total amount of ITC to be passed on			49,123,070

