

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

Case No. : 78/2022
Date of Institution : 17.12.2021
Date of Order : 30.09.2022

In the matter of:

1. Shri Janki Prasad Pandey, Resident of H-76, Nalanda Parisar, Kesar Bagh Road, Indore, Madhya Pradesh – 452 012.
2. Director General of Anti-Profiteering, Central Board of Indirect Taxes & Customs, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.

Applicants

Versus

M/s Madhya Pradesh Housing and Infrastructure Development Board, 3rd and 4th Floor, Block – 3, Paryawas Bhawan, Mother Teresa Marg, Bhopal – 462 011.

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 Applicants.
2. Sh. Sanjay Tiwari, Advocate, Authorised Representative for the Respondent.

ORDER



1. The present Report dated 15.12.2021 has been received in National Anti-Profiteering Authority (**NAA or Authority**) on 17.12.2021 from the Applicant No. 2 i.e. the Director General of Anti-Profiteering (**DGAP**) after a detailed investigation under Rule 129(6) of the Central Goods & Service Tax (**CGST**) Rules, 2017. The brief facts of the present case are that a reference was received

from the Standing Committee on Anti-profiteering on 16.12.2020 under Rule 129 of the CGST Rules, 2017 to conduct a detailed investigation in respect of an application filed by the Applicant No. 1 under Rule 128 of the Rules, alleging that he purchased an EWS House in the Project at Kamayani Nagar at Rau, Indore from the Respondent in May, 2019 and the Respondent charged GST @ 12% from him instead of 1%.

2. The DGAP in his Report dated 15.12.2021, inter-alia stated that :-

- i. The said complaint of the Applicant No. 1 was earlier received by the Authority, which was forwarded by Authority to Commissioner of State Tax, Indore for necessary action with the remarks *"Since, the issue doesn't seem to be pertaining to profiteering but might involve wrong charging of GST"*. However, the Madhya Pradesh State Level Screening Committee examined the said application and observed that since the Applicant's No. 1 house was an EWS House, the applicable GST rate levied on EWS Houses was 8% under affordable Housing Scheme whereas the Respondent had charged 12% GST from the Applicant No. 1 and hence forwarded the matter to the Standing Committee on Anti-profiteering for further investigation. The Standing Committee on Anti-profiteering being satisfied by the State Screening Committee report, decided to forward the said application to the DGAP for further action, in terms of Rule 128 of the Rules.
- ii. On receipt of the reference from the Standing Committee on Anti-profiteering, a notice for initiation of investigation under Rule 129 of the Rules was issued by the DGAP on 22.01.2021, calling upon the Respondent to reply as to whether he admitted that the benefit of ITC had not been passed on to the Applicant No. 1 by way of commensurate reduction in price and if so, to suo-moto determine the quantum thereof and indicate the same in his reply to the notice as well as furnish all supporting documents.

- iii. Vide the said notice dated 22.01.2021, the Respondent was given an opportunity to inspect the non-confidential evidences/information which formed the basis of the said Notice, during the period 01.02.2021 to 03.02.2021, which the Respondent did not avail.
- iv. Vide e-mail dated 09.11.2021, the Applicant No. 1 was also afforded an opportunity to inspect the non-confidential documents/reply furnished by the Respondent, on 10.11.2021 or 11.11.2021. However, the Applicant No. 1 also did not avail the said opportunity.
- v. The time limit to complete the investigation was 15.06.2021, as per Rule 129(6) of the Rules. 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. As per Hon'ble Supreme Court Order in Suo Motu Writ Petition (Civil) No. 3 of 2020 dated 08.03.2021 in cases where the limitation for any suit, appeal, application or proceeding had expired during the period between 15.03.2020 till 14.03.2021, notwithstanding the actual balance period of limitation remaining, all persons shall have had 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, was greater than 90 days, that longer period shall apply. The above relief had been extended and the period from 14.03.2021 till further orders shall also stand excluded in computing the limitation period as per the Hon'ble Supreme Court Order dated 27.04.2021 passed in Miscellaneous Application No. 665/2021 in SMW(C) No. 3/2020. Further, the above relief had been extended and the period from 02.10.2021 shall had 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.
- vi. The period covered by the current investigation was from 01.07.2017 to 30.11.2020.

- vii. The Respondent replied vide letter and e-mail dated 08.09.2021 and among other documents, furnished the copy of agreement entered by him with the developer M/s. Shekhar Construction, Flat No. 3, 5 Geeta Bhawan Road, Indore and submitted that in the Project at Kamayani Nagar, the development work of the Project was assigned to M/s. Shekhar Construction.
- viii. On the basis of the above submission of the Respondent, an addendum to the notice of initiation of investigation was issued on 30.09.2021 for including M/s. Shekhar Construction as a Co- Respondent in the ongoing investigation.
- ix. In response to the notice dated 22.01.2021 and subsequent reminders/summons/e-mails, the Respondent submitted the following documents/information/reply vide his letters/e-mails dated 08.09.2021 14.10.2021, 30.11.2021 and 03.12.2021.
- a. Copies of GSTR-1 and GSTR-3B Returns for the period July, 2017 to November, 2020.
 - b. Electronic Credit Ledger for the period July, 2017 to November, 2020.
 - c. ST-3 returns for the period April, 2016 to June, 2017.
 - d. Copies of allotment letters issued to Applicants.
 - e. Details of applicable tax rates, pre-GST and post-GST.
 - f. Copy of Balance Sheet for FYs 2017, 2018, 2019, 2020 and Trial Balance Sheet for the period April, 2020 to November, 2020.
 - g. List of home-buyers for the Project at Kamayani Nagar.
 - h. Project details submitted to RERA.
 - i. Copy of Agreement between Respondent and Co-Respondent for the project at Kamayani Nagar.
 - j. 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 for the Project at Kamayani Nagar.
 - k. Final Completion Certificate dated 26.02.2019
- x. The Respondent's reply was summed up as follows:
- a. Total units in the Project at Kamayani Nagar of Respondent was having following categories of units:

A. Phase one

S. No.	Name of Units	Number of units
1.	EWS	17
2.	MIG	11
3.	HIG	02
	Total no. of units	30

B. Phase two


S. No.	Name of Units	Number of units
1.	MIG	34
2.	HIG	29
	Total no. of units	63

- b. The Respondent had given the contract of development of Project at Kamayani Nagar, Rau, Indore to Co-Respondent.
- c. The work of the Respondent was generally carried out through contractor. All of the tax liability in regard to the work assigned to the contractor was carried out by the contractor. Under Section 7 of VAT Act it was specified that if the liability of VAT was discharged either by the contractor or sub-contractor then other party shall not be responsible for the said amount of tax. Since the liability of VAT Tax was discharged by the contractor so the Respondent was not required to pay any VAT Tax, so no return of VAT was filed by the Respondent. Further, no amount was recovered by the Respondent from his customers on account of VAT.
- d. During the period from April, 2016 to June, 2017, as Service Tax was applicable, so the Respondent had collected the Service Tax and paid to the Service Tax department.
- e. The Respondent had not taken any CENVAT/ITC, so there was no ITC Register maintained by the Respondent.
- f. During the period from July, 2017 to November, 2020, GST was applicable so the Respondent collected the same and paid to the GST Department. However, he had not taken any ITC of GST paid by the contractor, as the work was issued during the pre-GST regime and


contract was given inclusive of tax and the contractor had not issued any separate GST invoice due to which the Respondent was not able to take credit of the same.

- g. About availment of GST, in pre-GST regime, the Respondent was having practice of giving tender/contract to the developer on inclusive basis, but under GST regime, he was giving contract on tender value plus GST i.e., the development work was given to the contractor at the rate exclusive of GST and ITC of the GST paid was duly taken by his Head Office and competent authority at the time of determining the value of unit had taken due care of Input Tax Credit. In the previous reply the fact of non-taking of ITC was mentioned, as earlier he was not having practice of paying any tax separately i.e., contract value was inclusive of all taxes.
- h. Regarding booking of unit on 22.12.2016, the amount which was received by the Respondent was not booking but just amount received by the Respondent along with application for registration for allotment in the project of the Respondent. That of initial amount for registration was not an allotment of unit. That being a Government organisation, the Respondent before launching any new scheme, make survey of respective area to ascertain the actual housing need of the area in which house scheme was proposed. That for ensuring actual need of the area, the Respondent usually invite pre booking of the proposed Project. The Respondent launched and started any new project only after having sufficient number of booking. If there was no sufficient number of booking then the Respondent, dropped the project and refund the amount to the allottee/customers who had deposited during pre-booking. That after making initial enquiry and by calling interest of people in the project of the Respondent, if there was sufficient number of booking then only respective division of the Respondent, request the competent authority for seeking approval for

launching of such scheme. That respective division of the Respondent only after obtaining the approval of the competent authority of the Respondent could apply to the local authority for taking the development permission under local law.

- i. In regard to some booking which was taken by the Indore Division of the Respondent before taking the development permission was the booking for ensuring the potential demand of housing accommodation so that it could be decided whether or not housing project should be launched in that area and how many units, the Respondent had to construct or develop for the purpose of ensuring that only so much of units was developed for which people had shown interest so that there would be no liquidity crunch. That at the time of registration of unit value of unit was also not fixed as development cost was also not available at that time so only a tentative value was shown or disclose the allottee/customers. 
- j. After receiving some registration, the competent authority had accorded consent for development of project vide his letter dated 08.12.2017, wherein he had specified that tender could be called and it was further specified that before start of work all necessary permission was required to be taken from the competent authority.
- k. After receiving the permission of competent authority of the Respondent, his division had obtained the development permission of local authority for development of project. Local Authority had granted the development permission for development of the project on 01.01.2018. Development work was assigned to different contract in the GST regime where in it was clearly mentioned that GST would be separately paid.
- l. In the application form for seeking allotment of unit in the project, it was clearly mentioned that the allottee was required to make the

payment of GST separately and in the present case the GST had been charged accordingly.

- m. The Respondent was being a Govt. Organisation keeping its record systematically and entire amount of GST collected from the allottee had been properly deposited along with GST Return.
- n. Determination of price of unit was made in the GST regime and at the time of fixing price of units, the Respondent was considering the effect of input tax available on input services taken for the development of the Project, so there was no issue of anti-profiteering against the Respondent.
- o. Regarding non-availment of ITC, in the previous letter, older working pattern was mentioned but during GST regime, the Respondent was giving contract on contract price plus GST i.e., he was paying GST separately and taking ITC of GST paid and at the time of determination of prices due impact of ITC was also given. 
- p. During Pre-GST regime all the Returns and other compliances were made in his division only but after post-GST regime all the compliances were made at HO Level, so his previous letter might please be treated as amended in the light of information provided in his letter dated 29.11.2021, submitted through email dated 30.11.2021.
- q. The condition of anti-profiteering was not applicable in the present case on the basis of gist of above discussion, as under:
 - i. Approval of competent authority of the Respondent to launch scheme was given in the year 2018 i.e., approval was given in the post GST Regime.
 - ii. Development permission of competent local authority was taken in the year 2018 i.e., development permission was obtained in the post GST regime.

- iii. Contract to the developer was given in the post GST regime and amount of GST was paid separately and ITC had been taken of the same. Those prices of units were fixed keeping in mind availability of ITC on the input supply.
- iv. The Project was of Post GST regime and no tax was recovered during the pre-GST regime so there was no question of anti-profiteering.


As per section 171 of CGST Act, 2017 anti- profiteering measure could be taken in any of the following situation:

- i. If benefit of reduction in rate of tax on supply of goods was not pass on.
 - ii. If benefit of ITC was not passed on the allottee.
- r. Reduction in rate of tax was not applicable: The condition of reduction in rate of tax was not applicable in the present case as all the necessary permission of development and development work and allotment of units was started in the GST regime only.
- s. Effect of ITC was already taken in the account as GST was paid separately to the developer. So, the ITC of GST paid to the developer was taken by his head office and if for any reason if ITC was not taken then it would be loss of THE RESPONDENT but in any case, it does not create any additional burden on the allottee, so in that case also there was no case of any profiteering to the Respondent.
- t. In the interest of justice and in order to avoid any uncalled litigation, it was requested to this Authority to provide an opportunity of hearing by via virtual mode so that his case could be decided on merit considering all the facts and figures.
- xi. In response to the addendum to notice dated 30.09.2021 and subsequent reminders/e-mails, the Co-Respondent submitted the following

documents/information/reply vide his letters/e-mails dated 01.11.2021 02.11.2021 and 11.11.2021.

- a. Copy of all agreements and tender documents for the construction of 02 HIG 'B' Type Duplex, 11 MIG & 17 EWS houses at "Kamayani Nagar".
 - b. Copy of Electronic Credit Ledger for the period July, 2017 to November, 2020.
 - c. Copy of Tran-1.
 - d. Details of applicable tax rates, Pre GST and post GST.
 - e. Copies of GSTR-1 for the period July, 2017 to November, 2020 and GSTR-9 Returns for the period July, 2017 to December, 2019.
 - f. Balance Sheet, P & L with all schedule for FY 2016-17, 2017- 18, 2018-19, 2019-20.
 - g. All Invoice/Bills related to "Kamayani Project" and Completion Certificate.
 - h. Status of Project at "Kamayani Nagar" - project completed and handed over to the Respondent on 26th Feb 2019.
 - i. Copy of Assessment Order for FY 2016-17 and VAT return summary of FY 2017-2018.
 - j. 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 for the project at Kamayani Nagar.
- xii. The Co- Respondent's reply was summed up as follows:
- a. The Co-Respondent obtained the tenders from the Respondent for construction of residential houses situated at Kamayani Nagar, Rau in the year 2018.
 - b. While filing the tender, the project amount was already decided and hence the rates cannot be changed.
- xiii. The Respondent & Co-Respondent did not claim confidentiality of any of the details/information furnished by them, in terms of Rule 130 of the Rules.
- xiv. The subject application, the various replies of the Respondent & Co-Respondent and the documents/evidences on record had been carefully examined. The main issues for determination was whether there was any reduction in the rate of tax or benefit of ITC on the supply of construction

service by the Respondent /Co- Respondent after implementation of GST w.e.f. 01.07.2017 and if so, whether such benefit was passed on by the Respondent /Co- Respondent to the recipients, in terms of Section 171 of the CGST Act, 2017.

- xv. From the Respondent's submissions, it revealed that the project at Kamayani Nagar at Rau, Indore was constructed in two phases. Both the phases were separately registered with Madhya Pradesh Real Estate Regulatory Authority (MPRERA). The phase having 17 EWS, 11 MIG Junior and 02 HIG Type 'B' houses was registered under Registration No. P-IND-18-1569 valid from 10.01.2018, whereas the second phase having 63 houses was registered under Registration No. P-IND-18-1738 valid from 11.04.2018. Further, the Applicant No. 1 had mentioned in his application that he had booked an EWS House and there was no complaint with regard to second phase having different registration No. P-IND-18-1738. Accordingly, the present investigation had been restricted to the phase registered under Registration No. P-IND-18-1569 involving construction of the 17 EWS, 11 MIG Junior and 02 HIG Type 'B' houses at Kamayani Nagar at Rau, Indore only. 
- xvi. As per the copy of Agreement dated 01.01.2018 entered between Respondent and Co- Respondent, it revealed that the Co-Respondent agreed to construct 02 H.I.G B type complex, 11 M.I.G and 17 E.W.S houses at Kamayani Nagar (23.35 Acre land). Also, Work Order dated 01.01.2018 was issued to the Co-Respondent by the Respondent for commencement of construction work. Further, the allotment letters for flats had been issued by the Respondent and Respondent had raised the demands (including Service Tax/GST) from the Applicant No. 1 and other buyers of the Project at "Kamayani Nagar". Hence, the Co-Respondent was the sub-contractor while the Respondent was the actual owner of the Project.
- xvii. The Respondent had contended that during the period from April, 2016 to June, 2017, as Service Tax was applicable, so the Respondent had collected


the Service Tax and paid to the Service Tax department. However, on perusal of Service Tax Returns (ST-3) for the period April, 2016 to June, 2017, it was noticed that the Respondent had not shown any taxable turnover therein. However, it was also pertinent to mention here that on perusal of home buyers list provided by the Respondent, it had been observed that the Respondent had raised demands of Rs.6,88,000/- from 4 home buyers during the period April, 2016 to June, 2017. Therefore, the contention of the Respondent was incorrect.

xviii. Further, the Respondent had also contended that the Respondent had not taken any CENVAT/Input Tax Credit, so there was no ITC Register maintained and during the period from July 2017 to November 2020, GST was applicable so the Respondent collected the same and paid to the GST department. In this regard, on perusal of GSTR-3B returns for the period July 2017 to November 2020, it was observed that the Respondent had availed ITC of GST to the tune of Rs. 53,74,91,787/-, out of which the Respondent had also utilized ITC of GST to the tune of Rs. 29,26,06,703/- for payment of GST. However, later on vide his email dated 30.11.2021, the Respondent asserted that the ITC was duly taken by his Head Office. Hence, the contention of the Respondent that he had not taken ITC of GST was incorrect by his own admission.

xix. Further, the contention of the Respondent that he had not taken any ITC of GST paid by the contractor, as the work was issued during the pre-GST regime and contract was given inclusive of tax, appeared to be incorrect. As per the work order dated 01.01.2018, the Agreement between the Respondent and Co- Respondent was executed on 01.01.2018. Hence, it was established that the work contract was issued in post-GST period only. Further, it was also revealed from the tender documents submitted by the Co-Respondent, specifically at Point (iv) of Financial Bid, it was mentioned that:

“Except GST, all duties, taxes of Central and State Governments, local bodies and authorities and other levies payable by the bidder shall be deemed to be included in the rate quoted by the bidder.”

Therefore, it was clear that the amount of GST payable by the Respondent to Co-Respondent was not included in the contract amount of Rs. 2,23,19,780/-. Hence, the contention of the Respondent that contract was given inclusive of tax was also incorrect. However, it was revealed from the submission made by the Co-Respondent that the amount of Rs. 2,23,19,780/- (exclusive of GST) was estimated cost of the work/Project whereas the actual amount paid by the Respondent to the Co-Respondent for work as completed was Rs. 1,95,88,052/-(exclusive of GST).

xx. Further, it was pertinent to mention here that the Respondent vide his reply dated 30.11.2021, also confirmed that the development work was given to the contractor at the rate exclusive of GST and ITC of the GST paid was duly taken by his Head Office and also during Pre-GST regime all the Returns and other compliances were made in his division only but after post-GST regime all the compliances were made at HO Level, so he requested that his previous letter might please be treated as amended in the light of information provided in his letter dated 29.11.2021, submitted through email dated 30.11.2021. Therefore, the contention of the Respondent that he had not taken any ITC of GST paid by the contractor, as the work was issued during the pre-GST regime and contract was given inclusive of tax, was incorrect in entirety. 

xxi. Furthermore, the Respondent had also contended that he was unable to avail the ITC of GST because the Co-Respondent had not issued any separate GST invoice. This contention of the Respondent was also incorrect. In this regard, it was observed that the Co-Respondent had issued GST invoices to the Respondent for the Project work at Kamayani Nagar, Rau, Indore and the copies of which had been submitted by the Co-Respondent and details of which were given below in the Table-A below:

Table-'A'

(Amount in Rs.)

S.No.	Invoice No.	Invoice date	Basic Amount	GST rate*	GST Amount	Grand Total
1	GST/19	06.04.2018	23,83,215	12%	2,85,985.80	26,69,200.80
2	GST/31	25.05.2018	32,13,937	12%	3,85,672.44	35,99,609.44
3	GST/34	27.06.2018	15,92,466	12%	1,91,095.92	17,83,561.92
4	GST/38	06.08.2018	15,18,562	12%	1,82,227.44	17,00,789.44
5	GST/49	05.09.2018	16,23,315	12%	1,94,797.80	18,18,112.80
6	GST/50	01.11.2018	16,74,497	12%	2,00,939.64	18,75,436.64
7	GST/59	04.01.2019	21,55,512	12%	2,58,661.44	24,14,173.44
8	GST/66	19.02.2019	30,32,205	12%	3,63,864.6	33,96,069.6
9	GST/113	26.02.2020	23,94,343	12%	2,87,321.16	26,81,664.16
Total:			1,95,88,052		23,50,566	2,19,38,618

Hence, this contention of the Respondent that the contractor had not issued any separate GST invoice due to which the Respondent was not able to take credit, was also incorrect.

xxii. Further, the contention of the Respondent that since the Project was initiated post GST, the input tax credits had already been factored in while fixing the per unit price to be charged from the home buyers reducing the same commensurately, appears to be incorrect. In this regard from the details of home buyers list provided by the Respondent, it was clear that there was no change in the total agreement value excluding taxes determined in 2016 (as demands were raised as early as prior to 31st March 2016) and total demands raised in pre-GST and post GST period. Therefore, the contention of passing on the benefit to the home buyer by adjusting the agreement value due to additional input credit getting available post GST was not tenable.

xxiii. Further the contention of the Respondent that since no tax was recovered during the pre-GST period so there was no question of anti-profiteering was also not tenable as profiteering in the current case was due to

eligibility of additional ITC in post GST which had nothing to do with recovery of tax in pre-GST period.

- xxiv. Finally, the fact of availment of ITC on the invoices issued by the sub-contractor having been accepted by the Respondent in the reply dated 29-11-2021, submitted through email dated 30.11.2021, had confirmed that the Respondent had benefitted himself by availing the ITC and had failed to pass on the same to his rightful contender, that was the homebuyers of the above said Project.
- xxv. Sufficient opportunity of submission of details in-person, writing and e-mails had already been provided to the Respondent and DGAP had taken note of all such submissions made by the Respondent till date and duly addressed him in the investigation Report.
- xxvi. From the above, it revealed that an amount of Rs. 23,50,566/- was paid by the Respondent to the Co- Respondent as GST amount applicable on the basic amount of Rs. 1,95,88,052, for the construction service supplied by the Co-Respondent to the Respondent in respect of Project at Kamayani Nagar. Hence, the Respondent was eligible to avail this amount of tax paid i.e., Rs. 23,50,566/- as ITC of GST in his GST Returns and offset his tax liability. The Respondent vide his submission through email dated 30.11.2021, had confirmed that the ITC of GST paid to the sub-contractor was duly taken by his Head Office. Hence, the Respondent had benefited from additional ITC of GST available to him, which he should have passed on to the customers of 17 EWS, 11 MIG Junior and 02 HIG Type B houses, by way of commensurate reduction in basic prices in terms of Section 171 of the CGST Act, 2017.
- xxvii. As regards the allegation of profiteering, from the documents submitted by the Respondent, it was observed that during the pre-GST era the Respondent was eligible to avail CENVAT credit of Service Tax paid on input services. However, CENVAT credit of Central Excise duty paid on

the inputs was not admissible as per the CENVAT Credit Rules, 2004, which was in force at the material time. Further, the Respondent had claimed that the VAT liability was discharged by the sub-contractor and he had neither paid VAT nor filed any VAT Return. Hence, ITC of VAT was also not available to the Respondent in the pre-GST regime. Further, post GST, the Respondent was eligible to avail the ITC of GST paid on all the inputs and input service including sub-contracts. However, on perusal of statutory Returns submitted by the Respondent, it was observed that the Respondent had not availed any CENVAT of Service Tax or ITC of VAT during the period 01.06.2016 to 30.06.2017 (pre-GST). Further, during the period from 01.07.2017 to 30.11.2020 (post-GST), the Respondent had availed ITC of GST to the tune of Rs. 53,74,91,787/-, out of which he had utilised Rs. 29,26,06,703/- for payment of GST. From the data submitted by the Respondent and Co- Respondent covering the period April, 2016 to November, 2020, details of the ITC availed by him, his turnover from the 17 EWS, 11 MIG Junior and 02 HIG Type B houses, the ratios of ITCs to turnovers, during the pre-GST (April, 2016 to June, 2017) and post-GST (July, 2017 to November, 2020) periods, are furnished in Table-‘B’ below:

Table-‘B’

(Amount in Rs.)

S.No.	Particulars	April,2016 to June, 2017 (Pre-GST)	July, 2017 to November, 2020 (Post-GST)
1	Credit of Service Tax Paid on Input Services (A)	0	-
2	Input Tax Credit of VAT paid on Inputs (B)	-	-
3	Total CENVAT/VAT/Input Tax Credit Available (C=A+B)	0	-
4	GST amount paid by the Respondent to Co-Respondent and which was available to Respondent as ITC of GST (D)	-	23,50,566
5	Total Turnover from Residential Area (E)	6,88,000	3,97,19,111
6	Total saleable area in Sq Mtr. (F)	1,400	1,400
7	Sold Area relevant to turnover in Sq Mtr. (G)	242	1,400
8	ITC proportionate to Sold Area (H)= (C or D)* G/F)	0	23,50,566
9	Ratio of Cenvat/Input Tax Credit to Turnover (I=H/E*100)	0.00%	5.92%

From the above Table-‘B’, it was clear that the ITC as a percentage of the turnover that was available to the Respondent during the pre-GST period (April, 2016 to June, 2017) was 0% and during the post-GST period (July, 2017 to November, 2020), it was 5.92% in respect of the 17 EWS, 11 MIG Junior and 02 HIG Type B houses at Kamayani Nagar. This clearly confirmed that post-GST, the Respondent had benefited from additional ITC to the tune of 5.92% in respect of the above Project.

xxviii. It was observed that the Central Government, on the recommendation of the GST Council, had levied 18% GST on construction service (effective rate was 12% in view of 1/3rd abatement on land value), vide Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017. However, the GST rate on construction of “Economically Weaker Section (EWS) Houses” constructed under Affordable Housing, was reduced to 12% (effective rate was 8% in view of 1/3rd abatement on value) from 18% vide Notification No. 1/2018 - Central Tax (Rate) dated 25.01.2018. It was also observed that the Respondent had charged 12% GST from all the home buyers including home buyers of EWS Houses. Accordingly, on the basis of the figures contained in Table-‘B’ 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 turnover, the recalibrated base price and the excess realization (profiteering) during the post-GST period considering GST @12%, has been tabulated in Table-‘C’ below.

Table-‘C’

(Amount in Rs.)

S. No.	Particulars		Post- GST
1	Period	A	July, 2017 to November, 2020
2	Output tax rate (%)	B	12.00%
3	Increase in ITC availed post-GST (%)	C	5.92%
4	Net Turnover during July, 2017 to November, 2020	D	3,97,19,111
5	GST @12%	E= D*12%	47,66,293


6	Total demand	$F = D + E$	4,44,85,404
7	Recalibrated Basic Price	$G = D * (1 - C)$ or 94.08% of D	3,73,67,740
8	GST @12%	$H = G * 12\%$	44,84,129
9	Commensurate demand price	$I = G + H$	4,18,51,868
10	Excess Collection or Profiteered Amount	$J = F - I$	26,33,536

From Table-‘C’ above, it was clear that the additional ITC of 5.92% of the turnover for 17 EWS, 11 MIG Junior and 02 HIG Type B houses should have resulted in the commensurate reduction in the base price as well as cum-tax price. Such excess amount collected from the customers or the profiteered amount was calculated as Rs. 26,33,536/- including the base profiteered amount of Rs. 23,51,371/-. The home buyers and unit no. wise break-up of this amount was given in Annex-16 of the Report. Therefore, in terms of Section 171 of the CGST Act, 2017, the benefit of such additional ITC amounting to Rs. 26,33,536/- was required to be passed on to the eligible recipients, including Rs. 52,873/- to be passed on to the Applicant No. 1.

xxix. Further, it was also observed that the GST rate on construction of “Economically Weaker Section (EWS) Houses” constructed under Affordable Housing, was reduced to 12% (effective rate was 8% in view of 1/3rd abatement on value) from 18% vide Notification No.1/2018 -Central Tax (Rate) dated 25.01.2018 by amending the Notification No.11/2017 - Central Tax (Rate) dated 28.06.2017. Accordingly, the allegation of profiteering had also been examined from the reduction in rate of tax angle, by comparing the applicable tax rates in the pre-GST and post-GST periods. In the pre-GST period (April, 2016 to June, 2017), only Service Tax @ 4.5% was payable on the construction value/BSP as the Respondent was neither charging nor paying VAT and in the post-GST period (July, 2017 to July, 2019), the effective GST rate was 8% on construction service (in case of EWS Houses). Therefore, the applicable tax rate on construction service in

pre-GST period was 4.5% (Service Tax @ 4.5% only). Hence the effective tax rate in construction service has, in fact, increased from 4.5% in the pre-GST period to 8% in the post-GST period (from 25.01.2018). Hence there was no rate reduction in post GST period.

xxx. Further, it was observed that Applicant No. 1 had alleged that the Respondent had charged GST @12% instead of 1%. On perusal of the application of Applicant No. 1, the documents submitted by the Respondent and the relevant provisions of the CGST Act, 2017 and the Rules, the allegation of the Applicant No. 1 appeared to be partially correct. It was observed that the Respondent had charged GST @12% from the Applicant No. 1 whereas the actual applicable rate of GST was 8% in the cases of all EWS houses as stated in above para. Hence the Respondent had charged GST at the wrong GST rate from the Applicant No. 1 and other home buyers of EWS Houses. Therefore, the issue of charging of GST at wrong rate does not fall under the scope of Section 171 of the CGST Act, 2017. In this situation, the remedial measures as prescribed under the CGST Act, 2017, might be taken recourse to before the appropriate authority so that the Applicant No. 1 might get refund of the extra GST amount paid by him. Hence, the matter was being referred to the jurisdictional GST Authorities for necessary action.

xxxi. On the basis of details of outward supply of the construction services submitted by the Respondent, it was observed that the service was supplied in the State of Madhya Pradesh only. 

3. Therefore, the DGAP has concluded that, the Respondent had profiteered an amount of Rs. 26,33,536/- (inclusive of GST) as additional ITC, after implementation of GST. The profiteered amount was 5.92% of the turnover. Therefore, in terms of Section 171 of the CGST Act, 2017, this profiteered amount of Rs. 26,33,536/- was required to be passed on to the eligible recipients, including Rs. 52,873/- to be passed on to the Applicant No. 1.

4. The above Report was carefully considered by this Authority and it was decided to allow the Applicant No. 1 and the Respondent to file their consolidated written submissions by 15.03.2022. A notice dated 25.02.2022 was issued to the Respondent to explain why the Report dated 15.12.2021 furnished by the DGAP should not be accepted and his liability for profiteering in violation of the provisions of Section 171 should not be fixed and penalty under Section 171 (3A) of the CGST Act, 2017 read with Rule 133 (3)(d) of the CGST Rules, 2017 should not be imposed.
5. The Respondent filed his written submissions on 21.04.2022 in which he inter-alia submitted that:-
- i. the Respondent is an organisation of the State government and entrusted with the task of satisfying need of housing accommodation and for matter connected with this state government. Before launching any new scheme, survey of respective area is conducted to ascertain actual housing need and invite prelaunch booking of the proposed project. If sufficient number of bookings is not received, the respondent dropped the project and refunds the amount to the allottee who has deposited during the pre-booking. If the sufficient number of bookings are received, the approval of the competent authorities taken for launching of the scheme.
 - ii. The Respondent had obtained the development permission of local authority for development of the Project after receiving the permission of competent authority. Local Authority had granted the development permission for development of the project on 01.01.2018. The development work was assigned to different contractor in the GST regime where in it was clearly mentioned that GST would be separately paid. Further, in the application form for seeking allotment of unit in the Project, it was clearly mentioned that the customers/homebuyers was required to make the payment of taxes and in the present case the taxes

had been charges accordingly. The Respondent, being a Govt. Organization, is keeping his record systematically and entire amount of GST collected from the customers/homebuyers had been properly deposited along with GST Return.

- iii. At the time of registration, value is not fixed as the development cost is not available so only tentative value is disclosed to the allottee, which include service tax paid at various stages during construction, which included cost and those element of cost, the input credit foregone due to the abetment, etc. the total cost of the project is discounted @60% and only 40% of the estimated cost is eligible for collection of service tax.
- iv. Work order for Phase Registration No. P IND-18*1569 involving 17 EWS, AA, MIG JUNIOR, 02 HIG Type 'B' Houses at Kamayani Nagar at Rau, Indore was issued 01.01.2018. The investigation has concluded that ITC has created surplus due to change in tax policy. However, there has not been any change of rate during the investigation period. Hence, the total investigation based on wrong data as mention in Table- B and C of the Report and facts and substance, which was not legally tenable and forceful in law. It was clear that the work was started in the GST regime and there is no change in law or no rate of reduction in the GST period in the subject matter of report. So, the question of application of anti-profiteering did not apply in the case, and the Report based on surmises need to be dropped.
- v. It is evident that the Project started after the GST implementation, hence price of unit has been fixed keeping into consideration GST charges and input credit available. No rate of tax changed during the investigation period.
- vi. By virtue of the service tax law applicable in the pre-GST period, no ITC could be taken due to abatement notification 24/2012-ST dated 6-6-2021. Due to the abetment taken by the work contract service provider, he lost his all ITC so the effective abatement comes to 4.8% (actual rate 12%

without land and 18% was in force), so the cost of every unit had hidden ITC paid 7.2% (12-4.8) included in the unit . This cost has been loss on the service provider. If the said 7.2% ITC foregone is taken into consideration, ITC/turnover ratio for the pre-GST period would be 7.2% and not 0 %, hence excess burden on the respondent would be -1.28%.

- vii. The CAG study report titled as “Implementation of Value Added Tax in India - Lessons for transition to Goods and Services Tax - A Study Report”, the suggested measure of the Apex Audit body was not mentioned which was very important to get the true and fair value of anti-profiteering, so the report lack the mechanism suggested and based on assumption not enforceable in law and should be dropped.

6. The DGAP had filed his clarifications on 27.05.2022 wherein the DGAP had inter-alia submitted that:-

- i. Section 171(1) of the CGST Act, 2017 which governs the anti-profiteering provisions under GST, reads as “Any reduction in rate of tax on any supply of goods or services or the benefit of ITC shall be passed on to the recipient by way of commensurate reduction in prices.” Therefore, Section 171(1) of the CGST Act, 2017, requires every supplier to pass on the benefit of reduction in rate of tax or the benefit of ITC to his recipients by reducing the price commensurately. The Respondent had misinterpreted the investigation Report submitted by the DGAP. Further, it was pertinent to mention here that the Respondent had raised demands/received advance from the home buyers in pre-GST period i.e., 01.04.2016 to 30.06.2017. Therefore, it was amply clear that the base price of the units fixed by the Respondent in pre-GST regime (considering the loss of ITC) should had been commensurately reduced by the Respondent in the GST regime and due benefit of ITC must had been passed on to the customers/buyers of the units in terms of Section 171 of the CGST Act, 2017. Hence, it was concluded that in the instant case, during the period of investigation, the

Respondent was benefitted with the additional ITC of GST which was required to be passed on to the eligible recipients in terms of Section 171 of the CGST Act, 2017. Therefore, the investigation carried out against the Respondent on the basis of data and information submitted by the Respondent, was well within the confines of law and hence it was incorrect to say that the basic foundation taken to determine profiteering was not based on the periods of business of the Respondent and the investigation was faulty.

- ii. In the instant case, since the Respondent raised the demands/ received advance from the home buyers in pre-GST period ie, 01.04.2016 to 30.06.2017, therefore, the claim of the Respondent that the Project started very much after implementation of the GST and determination of price of unit was also made in GST regime, was incorrect. Furthermore, the claim of the Respondent that no ITC could be taken due to abatement Notification 24/2012-ST dated 06.06.2012 was erroneous. Firstly, the said Notification was not an abatement Notification but was actually an amendment Notification, amending "Service Tax (Determination of Value) Rules, 2006" and was inter-alia applicable to the "Works Contract Service" and hence was not applicable to the Respondent as the Respondent was providing "Construction of Residential Complex Service" in the Service Tax regime which might be corroborated with the ST-3(Service Tax) Returns of the Respondent filed for the period 01.04.2016 to 30.06.2017. The Respondent was filing ST-3 Returns under the category of service "Construction of Residential Complex Service" only. It was also pertinent to mention here that in the ST-3 Return filed by the Respondent, the Respondent furnished as "No" to the specific points (Sl. No. All & A12), seeking information on the Exemption and Abatement respectively, availed by the Respondent during the relevant period. The Respondent, himself furnishing in the ST-3 Returns as no Exemption or Abatement was availed whereas here, the Respondent was contesting that

abatement was available to him under Notification No. 24/2012-ST dated 06.06.2012. Moreover, the said Notification was applicable for mere determination of the value of service portion in the execution of a works contract and did not provide abatement on the services provided by the Respondent i.e., "Construction of Residential Complex Service" and also the said Notification did not restrict any service provider from the taking CENVAT Credit of input services in the Service Tax regime. Therefore, the claim of the Respondent was incorrect in entirety.

- iii. Terms and conditions agreed between Respondent and Co-Respondent need no clarification as it did not in any way impact the amount of profiteering computed by the DGAP.
- iv. During course of investigation, the Respondent submitted before the DGAP that since the liability of VAT Tax was discharged by the contractor so the Respondent was not required to pay any VAT Tax, so no VAT Returns were filed by the Respondent and also no amount was recovered by the Respondent from the home buyers on account of VAT. It was further pertinent to mention here that despite receiving advances/payments from home buyers in pre-GST period, the Respondent entrusted the construction to the Co- Respondent in GST regime, there was no VAT involved in the work order.
- v. However, the Respondent in his submissions had claimed Rs. 46,209 as ITC of VAT paid on inputs in his hypothetical Table-B prepared by the Respondent which was incorrect. Moreover, the ratio arrived as 7.2% at Sl. No. 9 for pre-GST period in his Table was also incorrect. Hence, it appeared that the Respondent was trying to mislead the ongoing proceedings by putting false and imaginary figures/data which had got nothing to do with the actual and correct figures/data. Therefore, on the basis of above, it was submitted that the assertions made by the Respondent was not tenable and computation of profiteering had been done by the DGAP within the scope of Section 171 and Rules made

thereunder and same was correct and entirely based on the data/information furnished by the Respondent.

- vi. The investigation in the instant case was carried out within the confines of Section 171 of the CGST Act, 2017 and Rules made thereunder. The contention of the Respondent had not been supported by any detailed methodology recommended by the C&AG study report. However, it was pertinent to mention here that "Implementation of Value Added Tax in India - Lessons for transition to Goods and Services Tax - A Study Report" was published by the C&AG in June, 2010 wherein C&AG recommended some points as suggestions under Chapter 3 (Lessons for transition to GST) of the said report. In the said report of the C&AG, no such suggestions/recommendations were provided as claimed by the Respondent. However, said report had not provided anything on the Anti-profiteering provisions as envisaged under Section 171 of the CGST Act, 2017. Therefore, the said report was not relevant for any detailed methodology to determine profiteering according to the Anti-profiteering provisions provided under Section 171 of the CGST Act, 2017. Accordingly, the claim of the Respondent was not tenable.

7. The DGAP's clarifications dated 27.05.2022 were supplied to the Respondent and the Applicant No. 1 to file their rejoinder. In the interest of natural justice, the Respondent and Applicant No. 1 were given an opportunity for a personal hearing in the matter on 04.08.2022. The same was attended by Sh. Sanjay Tiwari, Advocate, Authorised Representative for the Respondent and Sh. Raminder Singh, Assistant Commissioner, for the DGAP. During the hearing, the Respondent has reiterated his earlier submissions dated 20.04.2022.
8. This Authority has carefully considered the Report dated 15.12.2021 furnished by the DGAP, all the submissions and the other material placed on record, and the arguments advanced by the Respondent. On examining the various submissions, the Authority finds that the following issues need to be addressed:-

- i. Whether there was any violation of the provisions of Section 171 (1) of the CGST Act, 2017 in this case?
 - ii. If yes, what was the additional benefit of ITC that has to be passed on to the recipients and whether various issues raised by the Respondent are tenable?
9. The Respondent has mainly contended that the Project started after implementation of the GST, as all permissions were obtained in the GST era and that the work has commenced after GST introduction. It is also informed that there is no change in the GST rate during the said period, hence the provision of Section 171(1) are not applicable on him. It is also submitted by the Respondent that they are an organisation of the State government and before launching any new scheme, survey of the respective area is conducted to ascertain the actual housing requirement and invite pre-launch booking of the proposed scheme. If sufficient number of bookings are received the approval of the competent authorities is taken for launching of the scheme. It is also submitted by the Respondent that the total investigation is based on wrong data as mentioned in Table-B and Table-C of the Report. In this regard the Authority finds that Section 171(1) of the CGST Act, 2017 which governs the anti-profiteering provisions under GST, reads as *"Any reduction in rate of tax on any supply of goods or services or the benefit of ITC shall be passed on to the recipient by way of commensurate reduction in prices."* Therefore, Section 171(1) of the CGST Act, 2017, requires every supplier to pass on the benefit of reduction in rate of tax or the benefit of ITC to his recipients by reducing the price commensurately. The Authority finds that the Respondent has raised demands/received advance from the home buyers in pre-GST period i.e., 01.04.2016 to 30.06.2017. The Authority also taken note of the submissions of the Respondent that tentative value disclosed to the allottee at the time of booking also includes Service Tax to be paid at various stages during construction and ITC foregone due to abatement, etc. In the given facts and circumstances, where the Respondent has collected certain amounts on the cost inclusive of Service Tax from the prospective buyers of the

flats/homes in a particular scheme, launched/pre-launched before 1-7-2017, the claim of the Respondent that the project started after implementation of the GST and determination of price of unit was also made in GST regime, is not sustainable. It emerges from the facts of the case and the submissions made by the Respondent that the base price of the units was fixed by the them in pre-GST regime and the same should have been commensurately reduced by the Respondent in the GST regime and due benefit of ITC should have been passed on to the customers/buyers of the units in terms of Section 171 of the CGST Act, 2017.

10. The Respondent has also submitted that the findings and the calculation of the profiteered amount of Rs. 26,33,536/- is not in consonance with the facts and the law. The Respondent has claimed that, if the ITC deemed loss of 7.2% caused to them due to abatement on account of Notification No 24/2012-ST dated 6-6-2021 is factored in the DGAP report, the ITC/turnover ratio in the pre-GST period would be 7.2% and not 0% and in their situation the excess burden on the Respondent would be -1.28%. In this regard, the Authority finds that the Respondent has received advances/payments from home buyers in the pre-GST period but the Respondent entrusted the construction to the contractor in GST regime, there was no VAT involved in the work order. The Respondent has submitted that since the liability of VAT Tax was discharged by the contractor so the Respondent was not required to pay any VAT Tax, so no VAT Returns were filed by the Respondent and also no amount was recovered by the Respondent from the home buyers on account of VAT. Further, the Respondent has claimed Rs.46,209/- as ITC of VAT paid on inputs in his hypothetical Table-B prepared by the Respondent which is incorrect. Moreover, the ratio arrived as 7.2% at Sl. No. 9 for pre-GST period in his Table was also incorrect. The Authority holds that the DGAP has computed the profiteered amount by taking ITC to turnover ratios in the pre-GST & GST periods into account which is correct, reasonable and logical and in accordance with the mandate of Section 171 of the Act.

11. The Respondent has also referred to CAG study report titled as "*Implementation of Value Added Tax in India - Lessons for transition to Goods and Services Tax - A Study Report*". It is claimed by the Respondent that, in the said CAG report, the suggested measure to get the true and fair value of anti-profiteering has been mentioned. Hence, the DGAP report lacks the mechanism suggested and is based on assumption not enforceable in law and should be dropped. The Respondent has not produced copy of the said CAG study report. The efforts to find out the said study report did not give any result, however, as suggested by the name itself, the topic of the report was implementation of value added tax in India. As such, any such report and its suggestions are suggestive in nature. In the case in hand, the DGAP has worked out the amount profited by the Respondent under the methodology adopted in similar cases in respect of other builders engaged in real estate industry. The said methodology captures the ratio of Cenvat or ITC with the turnover of the pre-GST and post-GST period and based on the comparison of the said ratio the profited amount is worked out. Therefore, the said report of the CAG is not relevant for any detailed methodology to determine profiteering according to the Anti-profiteering provisions provided under Section 171 of the CGST Act, 2017. Accordingly, we find that such claim of the Respondent is not tenable.

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12. The Authority finds that, Section 171 (1) deals with two situations: one relating to the passing on the benefit of reduction in the rate of tax and the second on 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 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% and during the post-GST period (July, 2017 to November, 2020), it was 5.92% for the Project at Kamayani Nagar at Rau, Indore. This confirms that post-GST, the Respondent has benefited from additional ITC to the

tune of 5.92% [5.92% (-) 0%] of his turnover for the said Project, 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/customers/recipients as Rs. 26,33,536/- for the Project of the Respondent at Kamayani Nagar at Rau, Indore, the details of which are mentioned in Annexure-16 of the Report, which includes the amount of Rs. 52,873/- of the Applicant No. 1.

13. For the reasons and discussions made hereinabove, 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 profiteered amount for the period from 01.07.2017 to 30.11.2020, in the instant case, as Rs. 26,33,536/- for the Project of the Respondent at Kamayani Nagar at Rau, Indore. This Authority under Rule 133 (3) (a) of the CGST Rules, 2017 orders that the Respondent shall reduce the prices to be realized from the buyers of the flats commensurate with the benefit of ITC received by him as has been detailed above.
14. Given the above discussions, the Authority finds that the Respondent has profiteered by Rs. 26,33,536/- for the Project at Kamayani Nagar at Rau, Indore 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/customers/recipients in the above said Project shall be refunded/returned/passed on by him, along with interest @18% thereon, from the date when the above amount was profiteered by him till the date of such payment, under the provisions of Rule 133 (3) (b) of the CGST Rules, 2017.
15. The Respondent is also liable to pay interest as applicable on the entire amount profiteered, i.e. Rs. 26,33,536/- for the Project at Kamayani Nagar, Rau, Indore. Hence the Respondent is directed to also pass on interest @18% to the customers/flat buyers/ recipients on the entire amount profiteered, starting from the date

from which the above amount was profiteered till the date of passing on/ payment, as per the provisions of Rule 133 (3) (b) of the CGST Rules, 2017.

16. The complete list of home buyers/customers/recipients has been attached as **Annexure - 'A'** with this Order, containing the details of the amount of benefit of ITC to be passed on in respect of the Project at Kamayani Nagar at Rau, Indore of the Respondent.
17. This Authority also orders that the profiteered amount of Rs. 26,33,536/- for the Project at Kamayani Nagar at Rau, Indore along with the interest @ 18% from the date of receiving of the profiteered amount from the home buyers/customers/recipients till the date of passing the benefit of ITC shall be paid/passed on by the Respondent within a period of 3 months from the date of this Order failing which it shall be recovered as per the provisions of the CGST Act, 2017.
18. It is also evident from the above narration of facts that the Respondent has denied the benefit of ITC to the customers/flat buyers/recipients in his Project at Kamayani Nagar at Rau, Indore 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. 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, the Respondent is liable for imposition of penalty under the provisions of the above Section for the amount profiteered from 01.01.2020 onwards. Accordingly, notice be issued to him for such purpose.
19. 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 home buyer/customer/recipient as per **Annexure- 'A'** attached with this Order along with interest @18% as prescribed, if not paid already. In this regard an advertisement of appropriate size to be visible to the public may also be

published in a minimum of two local Newspapers/vernacular press in Hindi/English/local language with the details i.e. Name of the builder (Respondent) –**M/s Madhya Pradesh Housing and Infrastructure Development Board, Project at Kamayani Nagar, Rau, Location- Indore, Madhya Pradesh and amount of profiteering i.e. Rs. 26,33,536/-** so that the concerned home buyers/customers/recipients can claim the benefit of ITC if not passed on. Homebuyers/customers/recipients may also be informed that the detailed NAA Order is available on Authority's website www.naa.gov.in. Contact details of the concerned Jurisdictional CGST/SGST Commissioner may also be advertised through the said advertisement.

20. The concerned jurisdictional CGST/SGST Commissioner shall also submit a Report regarding the compliance of this Order to this Authority and the DGAP within a period of 4 months from the date of this Order.
21. Further, on perusal of the Report, it is also observed that the Respondent appears to have charged GST at the wrong GST rate from the Applicant No. 1 and other homebuyers of EWS Houses. As the issue of charging of GST at wrong rate does not fall under the scope of Section 171 of the CGST Act, 2017, the concerned jurisdictional CGST/SGST Commissioner may like to take necessary action in this matter, as deemed fit. In this regard, a letter dated 10.05.2022 has already been written to the Commissioner of Commercial Taxes Indore, Madhya Pradesh by the Additional Director General, DGAP, New Delhi.
22. Since the Respondent has profited in the instant project, there is every likelihood that he has profited in other projects also under the GSTIN-23AAALM0488N1ZS. The Authority has reasons to believe that the Respondent may have resorted to profiteering in the other projects also and hence, it directs the DGAP under Rule 133(5) to investigate all the other projects of the Respondent under the same GST registration which have not yet been investigated from the perspective of Section 171 of the CGST Act, 2017 and

submit complete investigation report for all the Projects under this single GST Registration.

23. The Hon'ble High Court of Delhi, vide its Order dated 10.02.2020 in the case of Nestle India Ltd. & Anr. Vs. Union of India has held that:-

"We also observe that prima facie, it appears to us that the limitation of period of six months provided in Rule 133 of the CGST Rules, 2017 within which the authority should make its order from the date of receipt of the report of the Directorate General of Anti Profiteering, appears to be directory in as much as no consequence of non-adherence of the said period of six months is prescribed either in the CGST Act or the rules framed thereunder."

24. A copy of this order be sent, free of cost, to Applicant No. 1, the DGAP, the Respondent, Concerned jurisdictional Commissioners CGST/SGST, the Principal Secretary (Town and Country Planning), Government of Madhya Pradesh RERA for necessary action.


Encl:- Annexure- A (Page-1)

Sd/-
(Amand Shah)
Technical Member & Chairman

Sd/-
(Pramod Kumar Singh)
Technical Member

Sd/-
(Hitesh Shah)
Technical Member

Certified Copy


(Dinesh Meena)
Secretary, NAA

File No. 22011/NAA/MPHIDB(EWS)/75/2022 / 8970-8978 Dated: 03.10.2022
Copy To:-

1. M/s Madhya Pradesh Housing and Infrastructure Development Board, 3rd and 4th Floor, Block -3, Paryawas Bhawan, Mother Tera Marg, Bhopal-462011.
2. Shri Janki Prasad Pandey, Resident of H-76, Nalanda Parisar, Kesar Bagh Road, Indore, Madhya Pradesh- 452012.
3. Chief Commissioner Of Central Goods & Services Tax (Bhopal Zone) 35-C, GST Bhawan, Administrative Area, Arera Hills, Bhopal-462011 (M.P.).
4. Office of Commissioner, Commercial Taxes, Moti Bungalow Compound, M. G. Road, Indore (M.P.).

5. Madhya Pradesh Real Estate Regulatory Authority - RERA Bhavan, Arera Hills, Main Road No. – 1, Bhopal – 462011.
6. Principal Secretary, Directorate of Town and Country Planning Paryavaran Parisar, E-5, Arera Colony, Bhopal, Madhya Pradesh.
7. Director General Anti-Profiteering, Central Board of Indirect Taxes & Customs, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.
8. Guard File.

ANNEXURE-A

LIST OF HOME BUYERS OF THE PROJECT AT KAMAYANI NAGAR, RAU, INDORE

S. No.	Customer Name	Unit Number	Amount of ITC to be passed on (in Rs.)
1	Shiv Ram Baghel	FL-40	54515
2	Niru Singh w/o vinay singh Thakur	FL-42	54518
3	Sneha Lata partani W/o Harish chandra Partani	FL-43	56963
4	Rakesh Pandey	FL-44	53337
5	Ruchika Bhawasar D/O Ramesh Chandra Bhawasar	FL-45	52123
6	Kuldeep Bhawasar	FL-46	52123
7	Shivangi Ram Puria	FL-47	59389
8	Mekal Dubey	FL-48	56963
9	Rakesh Chaudhary	FL-49	58820
10	Rohit Pandey	FL-51	56963
11	Archana Chaudhary W/O Sanjay Chaudhary	FL-52	53051
12	Vivah Pandey W/o Krshan Datt Dwivedi Ji	FL-53	52873
13	Kishor figde	FL-54	59492
14	Reena sharma	FL-56	54937
15	Mina kapur W/O Hehant Kapur	CM 39 (2HIG)	332336
16	Tushar Soni	CM 40 (2HIG)	350763
17	Girish Kumar Shinde	EL 39	187190
18	Kranshkant Medtwal	EL 40	158798
19	Prakash Chandra Dhasal	EL 41	200238
20	Shobha Pujary	EL 42	158798
21	Swati vyas	EL 46	144410
22	Rameshwar Prasad	EL 47	144410
23	Sunil Tiwari	EL 49	180526
TOTAL			26,33,536/-