

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

Case No. 25/2022
Date of Institution 30.12.2020
Date of Order 22.06.2022

In the matter of:

1. Shri Parveen Kumar Bansal, P-102, BPTP Park Grandeura, Sector-82, Faridabad-121004.
2. Director-General of Anti-Profiteering, Indirect Taxes & Customs, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.

Applicants

Versus

M/s Sternal Buildcon Pvt. Ltd., 12th Floor, Dr. Gopal Das Bhawan, 28 Barakhamba Road, New Delhi-110001.

Respondent

Quorum:-

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

Present:-

1. Parveen Kumar Bansal Applicant No. 1 in person
2. None for the Respondent.

ORDER

1. The National Anti-Profiteering Authority (NAA) vide Interim Order No. 28/2020 dated 27.11.2020 in this matter had passed the following order:-

“21. We have carefully considered the Report furnished by the DGAP, the submissions made by the Respondent and the other material placed on record. On examining the various submissions, the observations of this Authority are as follows:-

- a) *The DGAP, in Para 16 of his report, has stated that the Respondent had entered into an agreement with the Contractor for the construction of Residential Units on 31.08.2017 and the construction activities commenced on 10.09.2017 and the draw of the flats was held on 18.09.2017. Therefore, the DGAP has concluded that the Residential project i.e. ‘The Serenas’ of the Respondent was launched in the post-GST regime and there was no price history of the residential units sold in the pre-GST regime which could be compared with the post-GST base price to establish whether there was any profiteering by the Respondent or not.*

However, as per the heading 'Other Current Liabilities' under Note 6 of the Annual Financial Statement of the Respondent for the period 2016-17, it is observed that the Respondent has received an amount of Rs. 16,77,22,611/- as 'Security from Applicants(d)' which is explained as "(d) During the Financial Year, the Company has launched "Affordable Housing Project" by the name & style of "SERENAS" under the Affordable Housing Scheme by Haryana Urban Development Authority Limited. The flats shall be allotted to the applicants by way of a draw of lots which is yet to happen as on 31st March 2017 & pending the same, the application money received has been shown as Security from Applicants." Given the above, it is clear that the Respondent has received the above mentioned 'Security Amount' in the pre-GST period and that it relates to the residential units of 'The Serenas'. Hence, the finding of the DGAP that there wasn't any price history of his residential units in the pre-GST period needs to be revisited since this Authority is of the view that the above-said security amount received from the applicants merits to be incorporated in the pre-GST turnover while computing the quantum of profiteering.

- b) *Further, this Authority observes that the two projects, namely 'The Serenas' (comprising residential units) and 'Signum 36' (comprising commercial units) have been developed and executed by the Respondent under a single GST registration on the same plot of land having common facilities and common areas. Further, the ITC paid is also common for the commercial and the residential area of the projects. Further, it is observed that the Respondent has also been maintaining a common Input Tax Credit Ledger and other connected records for the residential and commercial units of 'The Serenas' and 'Signum 36'. Therefore, these two projects deserve to be considered as an integrated project comprising both, residential and commercial units for the purpose of computation of profiteering in terms of Section 171 of the CGST Act, 2017.*
- c) *Needless to state that while computing the quantum of profiteering in the instant case, the amounts received as 'Security Amount' in respect of 'the Serenas' and the 'Advance Token Money' in respect of 'Signum 36' shall be appropriately factored in the computation."*

2. The brief facts of the case have been mentioned in the NAA's I.O. No. 28/2020 dated 27.11.2020 and the same are reproduced below:

- i. A reference was received from the Standing Committee on Anti- profiteering on 28.06.2019, to conduct a detailed investigation in respect of an application filed under Rule 128 of the CGST Rules, 2017 by Applicant No. 1 alleging profiteering by the Respondent in respect of purchase of a flat no. 7-205 (2BHK-T3), in the Respondent's project "The Serenas", Sector-36, Sohna, Gurgaon-122002. The Applicant No. 1 alleged that the Respondent had not passed on the benefit of ITC to him by way of commensurate reduction in prices and charged full rate of GST on the amount due to him against payments.
- ii. On receipt of the aforesaid reference from the Standing Committee on Anti-profiteering on 28.06.2019, a notice under Rule 129 of the CGST Rules was issued by the DGAP on 08.07.2019 to the Respondent to reply as to whether he admitted that the benefit of ITC had not been passed on to the recipients 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 documents in support of his reply. Further, the Respondent was allowed to inspect the non-confidential evidence/information which formed

the bases of the said notice, during the period 15.07.2019 to 17.07.2019. The Respondent availed of the said opportunity on 22.07.2019 and inspected the documents.

- iii. Vide E-mail dated 18.02.2020, Applicant No. 1 was also allowed to inspect on 26.02.2020 or 27.02.2020 the non-confidential documents/reply furnished by the Respondent. However, the Applicant No. 1 did not avail of the said opportunity.
- iv. The period covered by the current investigation was from 01.07.2017 to 30.06.2019 and the time limit to complete the investigation was extended up to 02.03.2020 by this Authority, vide Order dated 12.12.2019, in terms of Rule 129(6) of the CGST Rules, 2017.
- v. The Respondent had submitted to the DGAP that the dwelling unit of Applicant No. 1 had been cancelled on 09.04.2018 due to default in making payment as per the Haryana Affordable Housing Policy 2013, and the amount was refunded to him by the Respondent.
- vi. The DGAP has reported that the Respondent has submitted that Anti-profiteering provisions did not apply to the project "The Serenas" since the draw for the selection of the allottees, the allotments, the Builder-Buyer agreements, and construction activities

were executed in the GST period only. On scrutinizing the documents submitted by the Respondent it was found that the Respondent entered into an agreement with the Contractor for the construction of Residential Units on 31.08.2017 after which construction activities started on 10.09.2017. Further the Respondent held the draw on 20.07.2017. Post draw, the first Builder-Buyer agreement was entered into on 18.09.2017. Therefore, it was observed that the Residential project "The Serenas" was launched in the post-GST regime and there was no price history of the residential units sold in the pre-GST regime which could be compared with the Post-GST base price to establish whether there was any profiteering by the Respondent or not as the Respondent neither availed any ITC nor had any turnover in pre-GST regime on Residential dwelling units. Further as per para 5 of Annexure- A of Affordable Housing Policy 2013 notified by the Haryana Government on 19.08.2013, Rs. 3,600/- per sq. ft. (for other High and Medium Potential Towns) was the Maximum allotment rate on per sq. ft. carpet area basis for Sohna and this was not the actual rate at which units were to be sold but the suppliers of construction service were free to fix their base price subject to the ceiling of Rs. 3,600/- per sq. feet. In the

instant case, all activities related to the residential project had been done only after the introduction of GST w.e.f. 01.07.2017. Therefore, the provisions of Section 171 of the CGST Act, 2017 were not attracted in the case of Residential Units, and no profiteering was found therein.

- vii. The DGAP has also reported that the Respondent had registered the impugned Group Housing Project under the provisions of Haryana Real Estate (Regulation and Development) Act, 2016 (HRERA) under Registration No. 02 of 2017 dated 19.06.2017, and the Respondent was permitted to develop the project along with certain commercial retail shops in the shopping complex named as "Signum-36" within the Group Housing Project. The Respondent submitted that he had received a sum of Rs 4,49,25,897/- during the pre-GST regime as advance token money/underwrite money in respect of commercial units in the commercial complex "Signum-36" in the Group Housing Project "The Serenas" before the start of any construction activities in the project. The Builder Buyer Agreement (BBA) in respect of Commercial Units sold was first executed on 03.11.2017 i.e. during the post GST period. Further, neither tax was levied/recovered under the provisions of Haryana Value Added Tax Act,

2003 nor had he availed any ITC since, there was no transfer of property in goods that had occurred in the pre-GST period consequently 'NIL' Return under the provision of HVAT Act, 2003 was filed. However, Service tax as applicable was payable on a 'receipt basis' and he was claiming credit in respect of service tax paid on various input services received by him, such as Legal, Architecture & structure engineers relatable to the commercial units only. Therefore, the Respondent had both CENVAT Credit as well as Turnover in the pre-GST period with regard to Commercial units and as such could be compared with the post-GST period.

- viii. Concerning the Commercial Project "Signum-36", The DGAP has reported that that before the GST was introduced; the Respondent had been availing credit of Service Tax paid on input services only. No credit was availed in respect of Central Excise Duty paid on the inputs as also the input tax credit of VAT paid on inputs by the Respondent. Further, post-GST, the Respondent was entitled to avail input tax credit of GST paid on all the inputs and the input services including the sub-contracts. From the information submitted by the Respondent for the period April 2016 to June 2019, the details of the input tax credit availed

by him, his turnovers from the commercial project “Signum-36”, the ratios of input tax credits to turnovers, during the pre-GST (April 2016 to June 2017) and post-GST (July 2017 to June 2019) periods, are as per Table-‘A’ below:-

Table-A (Amount in Rs.)

S. No.	Particulars	April 2016 to June 2017	July 2017 to June 2019
(1)	(2)	(5) = (3) + (4)	(8)= (6)+(7)
1	CENVAT of Service Tax Paid on Input Services used as per ST-3 (A)	28,62,077	-
2	Input Tax Credit of VAT Paid on Purchase of Inputs (B)	-	-
3	Total Input Tax Credit of GST Availed for Commercial Units (C)	-	73,93,500
4	Total CENVAT/Input Tax Credit Available (D)= (A+B) or (C)	28,62,077	73,93,500
5	Turnover for Commercial Units as per List of Shop Buyers (E)	4,49,25,897	12,56,34,568
6	Total Saleable Area of Commercial Units (in SQF) (F)*	38,211.35	38,211.35
7	Total Sold Area relevant to turnover as per List of Shop Buyers (in SQF) (G)	13,539.47	34,127.00
8	Relevant ITC [(H)= (D)*(G)/(F)]	10,14,123	66,03,221
	Ratio of Input Tax Credit Post-GST [(I)=(H)/(E)]	2.26%	5.26%

ix. The DGAP has stated that the ITC as mentioned in the ‘Table A’ above as a percentage of the turnover that was available to the Respondent during the pre-GST

period (April 2016 to June 2017) was 2.26% whereas, during the post-GST period (July 2017 to June 2019), the percentage was 5.26%. It clearly confirmed that post-GST, the Respondent had benefited from additional input tax credit to the tune of 3.00% [5.26% (-) 2.26%] of the turnover. Accordingly, the profiteering had been examined by comparing the applicable tax rate and input tax credit available in the pre-GST period (April 2016 to June 2017) when Service Tax @4.50% was payable with the post-GST period (July 2017 to June 2019) when the effective GST rate was 12% (GST @18% along with 1/3rd abatement for land value) on construction service, vide Notification No.11/2017-Central Tax (Rate), dated 28.06.2017. Accordingly, based on the figures contained in Table- 'B' above, the comparative figures of the ratio of ITC available/availed 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 has been furnished by the DGAP in the below mentioned

Table B:-


Table-B (Amount in Rs.)

S.No	Particulars	Post-GST
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1	Period	A	After 01.07.2017
2	Output GST Rate (%)	B	12.00
3	The ratio of CENVAT credit/Input Tax Credit to Total Turnover as per table-'B' above (%)	C	5.26
4	Increase in input tax credit availed post-GST (%)	D=5.26% less 2.26%	3.00
5	<u>Analysis of Increase in input tax credit:</u>		
6	Base Price raised/collected from July 2017 to June 2019 (Rs.)	E	12,56,34,568
7	GST@12% over Base Price	F=E*12%	1,50,76,148
8	Total amount to be collected/raised	G=E+F	14,07,10,716
9	Recalibrated Base Price	H=(E)*(1-D) or 97% of (E)	12,18,65,531
10	GST@12%	I=H*12%	1,46,23,864
11	Commensurate demand price	J=H+I	13,64,89,395
12	Excess Collection of Demand or Profiteering Amount	K=G-J	42,21,321

- x. Given the above Table-'B' above, the DGAP has claimed that the additional ITC of 3% of the turnover should have resulted in the commensurate reduction in the base price as well as cum-tax price. Therefore, in terms of Section 171 of the CGST Act, 2017, the benefit of such additional ITC was required to be passed on by the Respondent to his recipients.
- xi. DGAP has further stated that based on the aforesaid CENVAT/ITC availability in the pre and post-GST periods and the details of the amount raised/collected by the Respondent from the other shop buyers during

the period 01.07.2017 to 30.06.2019, the Respondent had benefited by an additional amount of ITC of Rs. 42,21,321/- which included GST @12% on the base profiteered amount of Rs. 37,69,037/-. The buyer wise/ unit-wise break-up of that amount has been provided by the DGAP in Annexure-16 of his report. The DGAP has also submitted that the above-mentioned amount did not include any benefit of ITC to be passed on to Applicant No. 1 as the provisions of Section 171 of the CGST Act, 2017 were not attracted in the case of buyers of residential units, including the Applicant No.1.

3. The Authority after considering the various submissions made by the Respondent, Applicants & the DGAP report, vide its Internal Order No. 28/2020 dated 27.11.2020, referred the matter back to the DGAP to reinvestigate the matter as per the provision of Rule 133(4) of CGST 2017. 
4. Accordingly, the DGAP has carried out necessary re-investigation and on conclusion of the same, a report dated 30.12.2020 was sent to the NAA under Rule 133 (4) of the CGST Rules, 2017 inter-alia stated that: -
 - i. The Authority after considering the various submissions made by the Respondent, vide its Internal Order No. 28/2020 dated 27.11.2020 referred

the matter back to the DGAP under Rule 133(4) of the Rules, and directed to re-investigate the matter on the following issues:

- a) The Authority was of the view that the Security amount received from the Applicants as on 31st March 2017 as per 'Other Current Liabilities' under Note 6 of the Annual Financial Statement merits to be incorporated in the pre-GST turnover while computing the quantum of profiteering.
- b) The Authority observed that the two projects, namely, 'The Serenas' (comprising residential units) and 'Signum 36' (comprising commercial units) had been developed and executed by the Respondent under a single registration on the same plot of land having common facilities and common areas. Further, the ITC paid was also common for the commercial and the residential area of the projects. Further, it was observed that the Respondent had also been maintaining a common ITC Ledger and other connected records for the residential and commercial units of 'The Serenas' and 'Signum 36'. Therefore, these two projects deserve to be considered as an integrated project comprising both,

residential and commercial units for the purpose of computation of profiteering in terms of Section 171 of the CGST Act, 2017.

c) While computing the quantum of profiteering in the instant case, the amount received as 'Security Amount' in respect of 'the Serenas' and the 'Advance Token Money' in respect of 'Signum 36' shall be appropriately factored in the computation.

ii. The DGAP has reported that after receiving reference from the Authority, the case was re- investigated as directed. With reference to the Authority's view of incorporating Advance/Security amount received from the Applicants in the Pre-GST turnover, reference was made to the allotment criteria as per Clause 5(iii) of the Affordable Housing Policy of Haryana Government issued dated 19.08.2013 which consists of the following procedure in summarised manner:-

- a) Issuance of Advertisement by the Respondent.
- b) Any person interested to apply for allotment of flat might apply on the prescribed application form along with 5% amount of the total cost of the flat. The Applicant would be required to deposit additional 20% amount of the total cost of the flat at the time of allotment of flat. The

balance 75% amount would be recovered in six equated six monthly instalments spread over three-year period.

- c) Scrutiny of all applications received, by the Respondent under overall monitoring of concerned District Town Planner (DTP) within 3 months from the last date of receipt of applications as indicated in the advertisement.
- d) On completion of scrutiny as above, the concerned Senior Town Planner shall fix the date of draw of lots. Simultaneously the ineligible applicants shall be so intimated and his 5% booking amount shall be refunded. No interest in such cases shall be paid.
- e) After fixation of date of draw of lot, advertisement to be issued informing date/time and venue of the draw of lot.
- f) The Allotment of flats shall be done through draw of lots in the presence of a committee consisting Deputy Commissioner or his representative, Senior Town Planner (Circle office), DTP and the representative of Respondent concerned.
- g) Only such applications shall be considered for draw of lots which was complete and which

fulfil the criteria laid down in the Policy.

- h) All non-successful Applicants in the draw of lots shall be refunded back his 5% booking amount, within 15 days of holding the draw of lots.
 - i) Cancellation of allotment in case of default of payment of instalment within the time period as prescribed in the allotment letter issued by the Respondent.
- iii. The DGAP has reported that in the present case, the Respondent had received a sum of Rs. 16,77,22,611/- as application security deposit from approx. 1,700 applicants (amounts ranging from Rs. 89,843/- to Rs. 1,07,681/- per applicant) for participation in the draw of lots, which was held in post-GST period. Whereas, the impugned project "The Serenas" consists of only 1,304 residential units available for draw of lots & rest un-successful buyers were to be refunded all the security deposit, without any interest.

The question that now arises was that whether the security deposit of Rs. 16,77,22,611/- received as application money, as on 31.03.2017 for participation of draw of lot to be held on 20.07.2017 (post-GST) was to fall under the definition of services in the pre-

GST regime?

- iv. The DGAP referred to various statutory provisions, Circulars and Guidance Notes and to the decision of the the Hon'ble Supreme Court of India in the case of M/s Larsen & Toubro Limited & Anr. Vs State of Karnataka wherein it was held that:

“the activity of construction undertaken by the Developer would be work contract only from the stage the Developer enters into a contract with the flat purchaser”.

and concluded that, for an activity to be eligible to Service Tax following three essential pre-requisites were required to be fulfilled:

- a) Such activity shall be a service as defined under Section 65B (44) of Finance Act, 1994.
- b) Such service shall be provided by one person to another.
- c) The place of provision of such service shall be in the Taxable Territory.

There must be service which had been made or agreed to be made for a consideration from one person to another.

In the case under re-investigation, the Respondent received application money/security deposit from various applicants and after receiving such application money,

Respondent was obliged to conduct draw of lots, to select successful applicants who would then sign an agreement to confirm the services to be provided by the Respondent. At the time of receiving such application money, Respondent was not engaged in making or providing any services. Only after the draw of lots followed by signing of agreement, services could be provided. The application money was merely a security deposit given by the applicant to confirm his willingness to enter in an agreement with the Respondent, if successful in the draw of lots. Thus, amount received from applicants as application money/security deposit cannot be treated as consideration received towards supply of any service and accordingly the same cannot form part of the term "Turnover" for the purpose of Service Tax.

v. The DGAP referred to various statutory provisions and concluded that the taxable event in GST was supply of goods or services or both. The term 'supply' was inclusive in nature which could be understood in terms of following parameters namely: -

- Supply of goods or services. Supply of anything other than goods or services does not attract GST.
- Supply should be made for a consideration.
- Supply should be made in the course or furtherance of business.

- Supply should be made by a taxable person.

- Supply should be a taxable supply.

Besides above parameters, GST Laws had provided certain exceptions to the requirement of supply being made for consideration and in the course of furtherance of business.

Therefore, it was important to find whether the security deposit (application money) taken from the prospective buyers on account of application against allotment of flat, if any, constitute consideration *vis a vis* any supply under the provisions of CGST Act.

Section 2(31) defines the term consideration as above which was inclusive and the consideration might be in cash or kind. The payment received would not be treated as consideration, if there was no direct link between the payment and supply. There should be a close nexus between the payment and supply and thus any payment/exchange/barter etc. would be treated as consideration for supply and liable to GST. However, any deposit given in respect of the prospective supply shall not be considered as payment made for such supply, unless the supplier appropriates such deposit as consideration for the said supply.

In view of the above, the security deposit/application money received by the Respondent cannot be treated as consideration for the supply to be made by him and therefore such amount

cannot be incorporated in the 'turnover'. There was an obligation to return the entire amount to the unsuccessful applicants. For successful applicants, till an agreement was signed, such deposits cannot be considered as consideration for such supply of services and hence would not be liable to tax.

The DGAP submitted that till the draw of lots followed by signing of sale agreement by successful applicants, the Respondent cannot assume that the receipt of Security Deposit/Application money was against supply of services as the recipients of Services and extent of services to be provided to him cannot be identified till draw of lots followed by signing of agreements with the applicants.

The security deposit/application money received before draw of lots was not linked/identifiable to any particular flat and assuming but not admitting in case the security amount of Rs. 16,77,22,611/- received from approx. 1700 interested buyers was incorporated in Pre-GST turnover (not allowable as per position of law discussed above), then also the relevant saleable area (which was also not known at the time of application as flats were not allotted) would exceed the total saleable area of the impugned project as the project consists of only 1304 residential units.

Therefore, while computing the relevant CENVAT/ITC, keeping saleable area to 1700 buyer as numerator and total saleable

was of 1304 buyers as dominator would give inappropriate result and would be erroneous and non-comparable.

vi. The DGAP has also stated that the in respect to Authority's another observation that there was a common ITC Ledger and other connected records for the residential and commercial units of 'The Serenas' and 'Signum 36' and separate details were not available, it was submitted that Respondent had submitted details of turnover as well as invoice-wise CENVAT/Input Tax Credit vide his letter dated 02.03.2020 .The summary was given in table-'C' below:

Table-'C'

S.No.	Project	Particular	Turnover	CENVAT/ITC	Remark
1	'The Serenas' (Residential)	01.04.2016 to 30.06.2017 (Pre-GST)	Nil	Nil	Cross checked with ST-3/VAT Returns and Assessment Order.
2		01.07.2017 to 30.06.2019 (Post-GST)	1,64,77,88,150	15,32,01,400	Reconciled with GSTR-3B
3	'Signum-36' (Commercial)	01.04.2016 to 30.06.2017 (Pre-GST)	4,49,25,897	28,62,077	Reconciled with ST-3 return
4		01.07.2017 to 30.06.2019 (Post-GST)	12,56,34,568	69,06,757	Reconciled with GSTR-3B

Therefore, in the present case, the Turnover as well as CENVAT/ITC reconciled with the ST-3/GSTR-3B returns was available therefore, the profiteering, if any would be computed for residential and commercial project by considering such relevant facts and the data.

vii. The DGAP has also intimated that the with regard, to re-computation of the quantum of profiteering in the instant case, the amount received as 'Security Amount' in respect


of 'the Serenas' cannot be incorporated in the Turnover as discussed above. The dates of events took place in the residential project 'the Serenas' was given in tabular form in table-'D' below:

Table-'D'

S. No.	Date	Event
1.	26.09.2016	Grant of License by the Director General, Town and Country Planning Department, Haryana
2.	19.06.2017	Issuance of registration certificate by the Haryana Real Estate Regulatory Authority
3.	01.07.2017	Introduction of Goods and Services Tax
4.	20.07.2017	Draw of Lots conducted by the Respondent (Allotment of Units)
5.	31.08.2017	Work order for construction to contractor.
6.	10.09.2017	Construction Activities started
7.	18.09.2017	First Builder Buyer Agreement entered b/w Respondent and the home buyer.

viii. As per the DGAP Report, in the present case, the following events were the determining factors in furnishing the Report dated 19.03.2020:

- a. Allotment of dwelling unit was made on 20.07.2017.
- b. Builder Buyer Agreement containing the allotment terms was entered on 18.09.2017.
- c. Contract for construction of the project was executed on 31.08.2017.
- d. Neither there was any turnover (as security deposit cannot be termed as 'turnover') nor was any CENVAT Credit/ITC availed by the Respondent in pre-GST regime.

- e. In view of the above, it was construed that there was no price history of the residential units sold in pre-GST regime which could be compared with the Post-GST base price to establish whether there was any profiteering by the Respondent or not, as Respondent neither availed any ITC nor had any turnover in pre-GST regime on Residential dwelling units and the Report dated 19.03.2020 was furnished accordingly.
- ix. Further, it was reported with regard to the computation of profiteering in Commercial Project "Signum-36", as was mentioned in para-19 of the DGAP Report dated 19.03.2020, that the Respondent had both CENVAT Credit as well as Turnover in the pre-GST period, and as such could be compared with the post-GST period and accordingly computed the additional ITC of 3% of the turnover by comparing the ratio of CENVAT/ITC to the Turnover available to the Respondent in Pre-GST and Post-GST periods and furnished the Report accordingly. 
- x. The DGAP concluded that his Report establishing and determining profiteered amount to the tune of Rs. 42,21,321/- (including GST on the base profiteered amount) might be considered.
- xi. The present investigation covers the period from 01.07.2017 to 30.06.2019.

xii. In view of the aforementioned findings, it appeared to the DGAP that the provisions of Section 171(1) of the CGST Act, 2017, requiring that “any reduction in rate of tax on any supply of goods or services or the benefit of ITC shall be passed on to the recipient by way of commensurate reduction in prices”, had been contravened by the Respondent in the present case.

5. The above Report of the DGAP was considered by this Authority in its sitting held on 05.01.2021 and it was decided to direct the Respondent and the Applicant No. 1 to file their consolidated written submissions in respect of the report of the DGAP by 20.01.2021. The Applicant No. 1 filed his written submissions vide emails dated 08.01.2021 and reiteration/reminder dated 12.02.2021 and inter-alia stated :-

- i. That it had not been investigated as to how much total GST had been collected from the customers, how much ITC had been availed and how much amount had been deposited in Govt. accounts.
- ii. Price of the units to be sold has been fixed by the Govt. Authorities as per Affordable Housing Policy-2013, which can be considered as Pre-GST price for comparison and working of Pre-GST and Post GST Scenario.
- iii. There is a single license on the same piece of land for the residential as well as the commercial area under affordable residential housing policy.

- iv. Booking was done in the pre-GST period and he was supposed to allot the same in pre-GST period i.e. within 90 days from the booking i.e latest by Feb., 2017. Further, duly filled application form signed by the customer and acknowledgement of the same by builder is contract only.
 - v. The Amount collected by the Builder in pre-GST period, for residential project also comes under the definition of Goods and Services as the same was received on the basis of agreed-supply of Goods/ Services in due course of time.
6. Supplementary report was sought from the DGAP on the above submissions of the Applicant No. 1 under Rule 133(2A) of the CGST Rules, 2017. The DGAP has filed his supplementary report dated 24.03.2021 as under :-
- i. The contention of Applicant No.1 that, “it had not been investigated that how much total GST had been collected from the customers, how much ITC had been availed and how much amount had been deposited to Govt. accounts”, had already been replied in para 2.1 of DGAP Letter’s of even No. 3700 dated 23.07.2020 which reads as under:-

"Vide Minutes of meeting dated 15.05.2019 (received in this office on 28.06.2019) the Standing Committee on Anti-profiteering referred an Application dated 12.04.2019 filed by the Applicant against M/s. Sternal Buildcon Pvt. Ltd. (GSTIN: 06AAOCS0457N1ZU) (Hereinafter referred to as "the Noticee") for the unit bought in the Noticee's project "The Serenas" The Applicant enclosed the copies of Allotment letter, Demand letter cum statement of Account, Tax Invoice issued by the Noticee for the unit bought by the Applicant. Further, during the investigation, the Noticee submitted the complete requisite documents as per Notice of Initiation dated 08.07.2019 including details of total amount demanded/invoice raised and the total GST collected reconciling with statutory returns which has already been considered in this office report dated 19.03.2020. Further, it is observed from the documents submitted by the Noticee that they are undertaking a single project viz. "The Serenas" only, for which this office has already furnished its Report on 19.03.2020. Further, in respect of the other projects launched by other group companies of the Noticee, the Applicant may approach the Screening Committee of Anti Profiteering of that concerned States."

Further, investigation of GST collected from the customers, quantum of ITC availed and deposition of amount to Govt. accounts is outside the scope of provisions of Section 171 of the Central Goods and Services Tax Act, 2017 and the Applicant may approach the appropriate authorities along with documentary evidences.

- ii. In relation to the contention of Applicant No. 1 that “Price of the units to be sold has been fixed by the Govt. Authorities as per Affordable Housing Policy-2013, which can be considered as Pre-GST price for comparison and working of Pre-GST and Post GST Scenario”, it would be appropriate to mention that that as per para 5 of Annexure- A of Affordable Housing Policy 2013, notified by Haryana Government on dated 19.08.2013, Rs. 3,600/- per Sq. ft. (for other High and Medium Potential Towns) is the Maximum allotment rate on per sq. ft. carpet area basis for Sohna and this is not the actual rate at which units is to be sold but supplier of construction service is free to fix their base price subject to the ceiling of Rs. 3,600/- per sq. feet.

Therefore, the submission of the Applicant No.1 that prices are fixed by Govt. Authorities is not correct and the same cannot be used for comparison purpose.

- iii. In relation to the contention of Applicant No. 1 that, there was a single license on the same piece of land for the residential as well as the commercial area under affordable residential housing policy, the DGAP submitted that grant of single license is a matter of record. However, it was stated that the Respondent had submitted details of turnover as well as invoice-wise CENVAT/Input Tax Credit vide their letter dated 02.03.2020 (Annex-12 to this office Report dated 19.03.2020). The Summary is given in Table below:

Table

S.No.	Project	Particular	Turnover	CENVAT/IT C	Remark
1	'The Serenas' (Residential)	01.04.2016 to 30.06.2017 (Pre-GST)	Nil	Nil	Cross checked with ST-3/ VAT Returns and Assessment Order.
2		01.07.2017 to 30.06.2019 (Pre-GST)	1,64,77,88,150	15,32,01,400	Reconciled with GSTR-3B
3	Signum-36'	01.04.2016	4,49,25,897	28,62,077	Reconciled with ST-3

	(Commercial)	to 30.06.2017 (Pre-GST)			return
4		01.07.2017 to 30.06.2019 (Post-GST)	12,56,34,568	69,06,757	Reconciled with GSTR-3B

Therefore, in the present case, the Turnover as well as CENVAT/ITC reconciled with the ST-3/GSTR-3B Returns was available, therefore, the profiteering, if any had been computed for residential and commercial project by considering their relevant facts and the data.

- iv. In relation to the contention of Applicant No. 1 that, booking was done in the pre-GST period and the Respondent was supposed to allot the same in pre-GST period i.e. within 90 days from the booking i.e. latest by February 2017, and that, the duly filled application form signed by the customer and acknowledgement of the same by builder was contract only, the DGAP submitted that, such concern had already been replied in para 2.IV of DGAP's Office letter of even no dated 20.07.2020 which reads as :-

'In this regard, it is submitted that in the allotment of the unit to the buyers including the Applicant was made through draw of lots, held on 20.07.2017 and first Builder Buyers Agreement was made on 18.09.2017. Further, the Respondent submitted to DGAP during the course of investigation that Builder buyer Agreement of the Applicant has not been executed since the dwelling unit was cancelled by the Customer. Further, it was observed from the VAT Assessment Orders for the period 01.04.2016 to 30.06.2017, that the Respondent had received a total sum of Rs. 4,49,25,897/- as advance from the Commercial Shop buyers only which is duly considered in Table-'B' of para 21 of this office report dated 19.03.2020. Therefore, the contention of the Applicant of allotment and entering into contract before July-2017 does not hold good. Applicant No. 1 may be requested to furnish documentary evidence to substantiate the claim.'

- v. In relation to the contention of Applicant No. 1 that, the amount collected by the Builder in pre-GST period, for the residential project also comes under the definition of Goods & Services as the same was received on the basis of agreed-supply of goods/services in due course of time, the

DGAP submitted that, such concern had already been addressed in para 6 & 7 of DGAP Report dated 30.12.2020 which reads as:-

"6. In the present case, the Noticee has received a sum of Rs. 16,77,22.611/- as application security deposit from approx. 1,700 applicants (amounts ranging from Rs. 89,843/- to Rs. 1,07,681/- per applicant) for participation in the draw of lots, which was held in post-GST period. Whereas, the impugned project "The Serenas" consists of only 1,304 residential units available for draw of lots & rest un-successful buyers were to be refunded all the security deposit, without any interest.

The question that now arises is that whether the security deposit of Rs. 16,77,22,611/- received as application money, as on 31.03.2017 for participation of draw of lot to be held on 20.07.2017 (post-GST) is to fall under the definition of services in the pre-GST regime? For clarity, reference is made to Section 66B of the Finance Act, 1994 which reads as:

"66B. There shall be levied a tax (hereinafter referred to as the service tax) at the rate of fourteen percent on the value of services, other than those services

specified in the negative list, provided or agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed."

The definition of term 'Service' has been engrafted under Section 65B (44) of Finance Act, 1994 as "any activity carried out for another for a consideration". The relevant extract of the said definition has been reproduced as under for the sake of ready reference:

"65B (44) Service means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include

(a).....

A bare perusal of aforesaid definition reveals that any activity which is carried out by one person for another in lieu of some consideration shall be considered as 'Service'. However, the term 'activity' embedded under the aforesaid definition of service has not been defined anywhere under Finance Act, 1994.

Further, Department vide its circular bearing D.O.F. No. 334/1/2012-TRU dated 16.03.2012 has clarified the meaning and scope of term activity as under:

“2.1.1 Activity has not been defined in the Act in terms of the common understanding of the word activity would include an act done, a work done, a deed done, an operation carried out, execution of an act, provision of a facility etc. It is a term with very wide connotation.

Activity could be active or passive and would also include forbearance to act, agreeing to the obligation to refrain from an act or to tolerate an act or a situation has also been specified as a declared service under section 66E of the Act.”

On a bare perusal of aforesaid definition, it can easily be concluded that the term 'activity' as used above has a very wide amplitude and it includes nearly each and every act done by a person.

Further, the term "person" is concerned, has been defined under Section 65B (37) of the Finance Act, 1994. A perusal of section 65B (37) reveals that definition of term 'person' is an inclusive one. It includes almost all forms of a natural and juristic person It specifically includes "firm" under term 'person Use of residuary clause, i.e. "every artificial juridical person, not falling within preceding clauses" leaves no doubt that intention of the legislature is to include every

possible entity whether natural or juristic under the ambit of term 'person.

The next pre-requisite which is required to be fulfilled in order to cover an activity into the ambit of term 'service' is that such activity should be carried out for a consideration.

*Further, **Guidance Note-2 of Service Tax Education guide dated 20.06.2012** discussed about the term 'Consideration and it reads as*

2.2 Consideration

2.2.1 The phrase 'consideration' has not been defined in the Act. What is, therefore, the meaning of 'consideration'?

As per Explanation (a) to section 67 of the Act "consideration" includes any amount that is payable for the taxable services provided or to be provided. Since this definition is inclusive it will not be out of place to refer to the definition of 'consideration' as given in section 2 (d) of the Indian Contract Act, 1872 as follows:

"When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise"

In simple terms, consideration means everything received or recoverable in return for a provision of service which includes monetary payment and any consideration of non-monetary nature or deferred consideration as well as recharges between establishments located in a non-taxable territory on one hand and taxable territory on the other hand.

8.6 Rule 6 of Service Tax Valuation Rules *which deals with specific situation where certain commission or costs received by the service provider would be included or excluded as part of the taxable service.*

(1) Subject to the provisions of section 67, the value of the taxable services shall include, -

...

(2) Subject to the provisions contained in sub-rule (1), the value of any taxable service, as the case may be, does not include -

(1) Initial deposit made by the subscriber at the time of application for telephone connection or pager or facsimile (FAX) or telegraph or telex or for leased circuit;

Therefore, in view of above, security deposit/application money, given in respect of probable supply of services should not be considered as payment made for such supply unless both the buyer and supplier sign an agreement converting such security deposit/application money, as consideration for the said supply of services.

The next condition which is required to be satisfied in order to be covered under the ambit of charging section is "services must be provided or agreed to be provided" in the Taxable Territory. The term "taxable territory" has been defined under Section 65B (52) of the Finance Act, 1994 as territory to which the provisions of this chapter apply. The said Section 65B (52) has been reproduced as under "taxable territory means the territory to which the provisions of this chapter apply.

*The Hon'ble Supreme Court of India in the case of **M/s Larsen & Toubro Limited & Anr. Vs State of Karnataka & Anr. (2013)** held that:*

"the activity of construction undertaken by the Developer would be work contract only from the stage the Developer enters into a contract with the flat purchaser".

As per aforesaid discussion, for an activity to be eligible to Service Tax following three essential pre-requisites are required to be fulfilled:

1) Such activity shall be a service as defined under Section 65B (44) of Finance Act, 1994.

2) Such service shall be provided by one person to another.

3) The place of provision of such service shall be in the Taxable Territory.

In view of aforesaid definition, in order to get covered within ambit of aforesaid definition, there must be service which has been made or agreed to be made for a consideration from one person to another.

In the case under re-investigation, the Noticee received application money/security deposit from various applicants and after receiving such application money. Noticee was obliged to conduct draw of lots, to select successful applicants who will then sign an agreement to confirm the services to be provided by the Noticee. At the time of receiving such application money, Noticee was not engaged in making or providing any services. Only after the draw of lots followed by signing of agreement, services can be provided. The application money is merely a

security deposit given by the applicant to confirm his willingness to enter in an agreement with the Noticee, if successful in the draw of lots. Thus, amount received from applicants as application money/security deposit cannot be treated as consideration received towards supply of any service and accordingly the same cannot form part of the term "Turnover".

7. Reference is also made to the provisions of Section 2(112) of the Central Goods and Services Tax Act, 2017 which defines the term Turnover as: "(112) turnover in State' or 'turnover in Union territory' means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis) and exempt supplies made within a State or Union territory by a taxable person, exports of goods or services or both and inter-State supplies of goods or services or both made from the State or Union territory by the said taxable person but excludes central tax, State tax, Union territory tax, integrated tax and cess,"

Further the term taxable supply is defined in Section 2(108) of the CGST Act, 2017 which defines it as "taxable supply means a supply of goods or services or both which is leviable to tax under this Act,"

GST is leviable on 'supply as defined under section 7 of the CGST Act according to which the expression "supply" includes:

(1)(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;

*(b) ******

*(c) ******

*(d) ******

*(1A)******

Further, reference is also made to sub-section 31 of section 2 of the Central Goods and Services Tax Act, 2017 which reads as "

*"(31) '**Consideration**' in relation to the supply of goods or services or both includes-*

(a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;

(b) the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government:

Provided that a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply: [Emphasis added]

In view of the above legal provisions, it is observed that the taxable event in GST is supply of goods of services or both. The term 'supply' is inclusive in nature which can be understood in terms of following parameters namely: -

1. Supply of goods or services. Supply of anything other than goods or services does not attract GST
2. Supply should be made for a consideration.
3. Supply should be made in the course or furtherance of business.
4. Supply should be made by a taxable person.
5. Supply should be a taxable supply.

Besides above parameters, GST Laws have provided certain exceptions to the requirement of supply being made for consideration and in the course of furtherance of business.

Therefore, it is important to find whether the security deposit (application money) taken from the prospective buyers on account of application against allotment of flat, if any, constitute consideration vis a vis any supply under the provisions of CGST Act. Section 2(31) defines the term consideration as above which is inclusive and the consideration may be in cash or kind. The payment received will not be treated as consideration, if there is no direct link between the payment and supply. From the close scrutiny of above definition, it is clear that there should be a close nexus between the payment and supply and thus any payment/exchange/barter etc. would be treated as consideration for supply and liable to GST. However, any deposit given in respect of the prospective supply shall not be considered as payment made for such supply unless the supplier appropriates such deposit as consideration for the said supply.

In view of the above, the security deposit/application money received by the Respondent cannot be treated as consideration for the supply to be made by them and

therefore such amount cannot be incorporated in the turnover. There is an obligation to return the entire amount to the unsuccessful applicants. For successful applicants, till an agreement is signed, such deposits cannot be considered as consideration for such supply of services and hence will not be liable to tax."

vi. In relation to the, the contention of Applicant No. 1 that, the Respondent have launched other projects also in the same period in the name of the same or group companies in which same type of irregularities may be investigated by the concerned Govt. legal agencies, the DGAP submitted that such concern had already been replied.

7. The Respondent has filed his written submissions dated 16.02.2021 and 02.04.2022, vide which he has requested to conclude the proceeding on the basis of comprehensive written submission filed by it on 28.09.2020 before the DGAP.

8. The proceedings in the matter could not be completed by the Authority due to lack of required quorum of members in the Authority during the period 29.04.2021 till 23.02.2022, and that the minimum quorum was restored only w.e.f. 23.02.2022 and hence the matter was taken up

for proceedings vide Order dated 23.02.2022 and hearing in the matter through Video Conferencing was scheduled to be held on 05.04.2022. Same was attended by Shri Praveen Kumar Bansal, Applicant No. 1 in person. During the personal hearing the Applicant No. 1 has re-iterated his arguments based on his written submissions dated 08.01.2021 and 17.01.2021. The Applicant No. 1 further requested a day's time to file his consolidated written submissions against the Report of the DGAP.

9. Further, the Applicant No. 1 filed his consolidated written submission on 05.04.2022 in which he re-iterated his earlier submission dated 7.04.2021 which were a reiteration of his submissions dated 08.01.2021.
10. The above Report was carefully considered by this Authority and a notice dated 05.01.2021 was issued to the Respondent to explain why the Report dated 30.12.2020 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. The Respondent was directed to file written submissions which have been filed on 16.02.2021 in which the Respondent has requested to conclude the proceeding on the basis of comprehensive written submission filed by it on 28.09.2020.

11. On perusal of the records and the Reports of the DGAP, the Authority finds that the Anti-profiteering provisions do not apply to the project "The Serenas", since the draw for the selection of the allottees, the allotments, the Builder-Buyer agreements, and construction activities were executed in the GST period only. The Respondent entered into an agreement with the Contractor for the construction of Residential Units on 31.08.2017 after which construction activities started on 10.09.2017. Further the Respondent held the draw on 20.07.2017. Post draw, the first Builder-Buyer agreement was entered into on 18.09.2017. Therefore, the Residential project "The Serenas" was launched in the post-GST regime and there was no price history of the residential units sold in the pre-GST regime which could be compared with the Post-GST base price to establish whether there was any profiteering by the Respondent or not as the Respondent neither availed any ITC nor had any turnover in pre-GST regime on Residential dwelling units.

12. The Authority finds that, as per para 5 of Annexure- A of Affordable Housing Policy 2013 notified by the Haryana Government on 19.08.2013, Rs. 3,600/- per sq. ft. (for other High and Medium Potential Towns) was the Maximum allotment rate on per sq. ft. carpet area basis for Sohna and this was not the actual rate at which units were to be sold but the suppliers of construction service were free to fix their base price subject

to the ceiling of Rs. 3,600/- per sq. feet. In the instant case, all activities related to the residential project had been done only after the introduction of GST w.e.f. 01.07.2017. Therefore, the provisions of Section 171 of the CGST Act, 2017 were not attracted in the case of Residential Units.

13. The Authority has considered the issue of receipt of security deposit/application money by the Respondent. The Authority finds that such payment received would not be treated as consideration, if there was no direct link between the payment and supply. There should be a nexus between the payment and supply. Any deposit given in respect of the prospective supply shall not be considered as payment made for such supply, unless the supplier appropriates such deposit as consideration for the said supply.

In the present case there was an obligation to return the entire amount to the unsuccessful applicants. For successful applicants, till an agreement was signed, such deposits cannot be considered as consideration for such supply of services because till the draw of lots followed by signing of sale agreement by successful applicants, the Respondent cannot assume that the receipt of Security Deposit/Application money was against supply of services as the recipients of Services and extent of services to be

provided to him cannot be identified till draw of lots followed by signing of agreements with the applicants.

The security deposit/application money received before draw of lots was not linked/identifiable to any particular flat. In this case the security amount of Rs. 16,77,22,611/- was received from approx. 1700 interested buyers whereas the project consists of only 1304 residential units.

14. The Authority has considered the facts in the DGAP's Report as reproduced at paragraph 4 (vi) to (viii) above and is in agreement with the conclusion therein as supported by Tables 'C' and 'D' therein.


15. With regards to the computation of profiteering in Commercial Project "Signum-36", the Authority has examined Annexure 16 of the DGAP Report dated 19.03.2020 and finds that the shops/units in the commercial complex were assigned to the various buyers prior to 1.07.2017 and demands of varying amounts were made from such buyers and consideration received. Such amounts have been correctly considered as turnover by the DGAP in his Reports and profited amount has been correctly determined therein. The Authority finds no reason to disagree with such calculation of profited amount or the method of calculation adopted by the DGAP as has

been detailed at paragraph 2 (viii) to 2 (xi) above and Tables 'A' and 'B' therein.

16. The Authority finds that, though there was a single license on the same piece of land for the residential as well as the commercial area under Affordable Residential Housing Policy, as per the details in the DGAP's Report dated 30.12.2020, the Respondent had submitted details of turnover as well as invoice-wise CENVAT/Input Tax Credit vide his letter dated 02.03.2020 which is summarized in Table 'C' above. Hence, in the present case, the Turnover as well as CENVAT/ITC reconciled with the ST-3/GSTR-3B returns was available, therefore, the profiteered amount could be computed for the commercial project by considering such relevant facts and data and it has been so computed.
17. Further, the Authority finds that as per the VAT Assessment Order for the period 01.04.2016 to 30.06.2017, the Respondent had received a total sum of Rs. 4,49,25,897/- as advance from the Commercial Shop buyers which was duly considered in the DGAP's Report dated 19.03.2020. Such amount has been duly reflected in Annexure 16 of the Report dated 19.03.2020 of the DGAP and is linked to particular Units vis a vis buyers.

18. 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, the Authority finds from the DGAP's Report that there was reduction of the rate of tax from 12% to 8%(after Land abatement) vide Notification No. 01/2018 Central Tax-Rate dated 25.01.2018 w.e.f. 25.01.2018. The Authority finds from the DGAP report that the Respondent has charged 12% till 24.01.2018 and 8% from 25.01.2018 in respect of the Project 'Serenas'. Therefore, the Respondent has passed on the benefit of reduction in the rate of tax in compliance with the provisions of Section 171 of the Central Goods and Service Tax Act, 2017 to the homebuyers in the Project 'The Serenas'. 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, as per the findings and discussions above, the Authority holds that the ITC as a percentage of the turnover that was available to the Respondent during the pre-GST period (April-2016 to June-2017) was 2.26% and during the post-GST period (July-2017 to December-2018), it was 5.26% for the project 'Signum 36' (whereas no such benefit accrued with respect to the Project 'The Serenas')

This confirms that, post-GST, the Respondent has been benefited from additional ITC to the tune of 3% (5.26% - 2.6%) of his turnover for the project 'Signum 36' and the same was required to be passed on to the shop buyers/ recipients of supply. The DGAP has calculated the amount of ITC benefit to be passed on to all the shop buyers/ recipients of supply as Rs. 42,21,321/- for the project 'Signum 36'.

19. In view of the above discussions, the Authority finds and determines that the Respondent has profiteered by an amount of Rs. 42,21,321/- for the project 'Signum 36' during the period of investigation i.e. 01.07.2017 to 30.06.2019. The above amount that has been profiteered by the Respondent from his shop buyers/ recipients of supply in the above mentioned project 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. 

20. 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 shops commensurate with the benefit of ITC received by him as has been detailed above.

21. The Respondent is also liable to pay interest as applicable on the entire amount profiteered, i.e. Rs. 42,21,321/-, for the project 'Signum 36'. Hence the Respondent is directed to also pass on interest @18% to the customers/ shop 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 provisions of Rule 133 (3) (b) of the CGST Rules 2017.
22. The complete list of recipients of supply/shop buyers in 'Signum 36' is attached as Annexure 'A' with this Order, with the details of amount of benefit of ITC to be passed on.
23. It is evident from the above narration of facts that Respondent has denied the benefit of Input Tax Credit (ITC) to the customers/shop buyers in contravention of the provisions of Section 171 (1) of the CGST Act, 2017 and he has thus committed an offence under Section 171 (3A) of the above Act and therefore, he is liable for imposition of penalty under the provisions of the above Section. However, since the provisions of Section 171 (3A) have come into force w.e.f. 01.01.2020 whereas the period during which violation has occurred is w.e.f. 01.07.2017 to 30.06.2019, hence the penalty prescribed under the above Section cannot be imposed on the Respondent

retrospectively. Accordingly, Show Cause Notice directing him to explain why the penalty prescribed under Section 171 (3A) of the above Act read with Rule 133 (3) (d) of the CGST Rules, 2017 should not be imposed on him, is not required to be issued.

24. We also order that the profiteered amount of Rs. 42,21,321/- for the Project 'Signum 36' along with the interest @ 18% from the date of receiving of such profiteered amount from the shop buyer 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.

25. The concerned jurisdictional CGST/SGST Commissioner is directed to ensure compliance of this Order. It may be ensured that the benefit of ITC .e. profiteered amount is passed on by the Respondent to each recipient of supply as per Annexure- 1 attached with this Order along with interest @18% from the date that such amount was profiteered till the date of return of such profiteered amount as per the provisions of Rule 133 of the CGST Rules, 2017. 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. Sternal Buildcon Pvt. Ltd., Project- 'Signum 36', Location- Sector 17, Sohna, Gurugram-122002, Haryana and amount of profiteering of Rs. 42,21,321/- so that the concerned recipients of supply/shop buyers can claim the benefit of ITC if not passed on. Such recipients of supply/shop buyers 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.

26. 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.
27. Further, the Hon'ble Supreme Court, vide its Order dated 23.03.2020 in Suo Moto Writ Petition (C) no. 3/2020, while taking suo-moto cognizance of the situation arising on account of Covid-19 pandemic, has extended the period of limitation prescribed under general law of limitation or any other special laws (both Central and State) including those prescribed under Rule 133(1) of the CGST Rules, 2017, as is clear from the said Order which states as follows:-

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

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

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

28. A copy of this order be sent, free of cost, to the Applicant, 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.

S/d.
(Amand Shah)
Technical Member &
Chairman

S/d.
(Pramod Kumar Singh)
Technical Member
Member

S/d.
(Hitesh Shah)
Technical

Certified Copy


(Dinesh Meena)

F.No. 22011/NAA/150/Sternal/2020

Dated: 22.06.2022

Copy to:-

1. M/s. Sternal Buildcon Pvt. Ltd. 12th Floor, Dr. Gopal Das Bhawan, 28 Barakhamba Road, New Delhi-110001.
2. Sh. Parveen Kumar Bansal, P-102, BPTP Park Grandeura, Sector -82, Faridabad-121004.
3. Directorate General of Anti-Profiteering, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, New Delhi-110001.
4. Commissioner Of Commercial Taxes, Vanijya Bhavan, Plot No. 1-3, Sector-5, Panchkula- 134 151.
5. Chief Commissioner of Central Goods & Services Tax Panchkula Sco 407408, Sector-8, Panchkula.
6. Haryana Real Estate Regulatory Authority PWD Rest House, Civil Lines, Gurugram, Haryana- 122001,
7. Principal Secretary, Department of Town & Country Planning Haryana, Plot No. 3, Sec-18A, Madhya Marg, Chandigarh-160018.
8. Guard file /NAA Website.

Encl: Annexure A (Page 1 to 3)

Annexure –‘A’

S.No.	Reference No	Customer name	Profiteering Amount to be passed on
1	BOKSG36/00030/16-17	Pardeep khatana	*
2	BOKSG36/00027/16-17	Mukul Bhandari	16550
3	BOKSG36/00071/17-18	Mr. JAIDEEP ARORA	41262
4	BOKSG36/00128/18-19	Mrs. Naresh	88926
5	BOKSG36/00104/17-18	Mr. Sachin	49186
6	BOKSG36/00041/17-18	DINESH KUMAR	48203
7	BOKSG36/00006/16-17	Mahtab Singh Halwan	24989
8	BOKSG36/00092/17-18	Mrs. SUSHILA	45155
9	BOKSG36/00024/16-17	Vipul Mehta	20029
10	BOKSG36/00107/17-18	Mrs. Abha kumari	6811
11	BOKSG36/00103/17-18	Ashutosh Kumar Dwivedi	28700
12	BOKSG36/00057/17-18	Mr. VIRENDER KUMAR VERMA	38248
13	BOKSG36/00008/16-17	Joginder Khatana	34795
14	BOKSG36/00029/16-17	Pardeep Khatana	*
15	BOKSG36/00033/16-17	Pardeep Khatana	*
16	BOKSG36/00019/16-17	Mohd. Sakir	*
17	BOKSG36/00142/18-19	Mr. Shashi Mohan	12999
18	BOKSG36/00042/17-18	RINKI SINHA	19638
19	BOKSG36/00036/17-18	SUMIT JAIN	23298
20	BOKSG36/00034/16-17	Niranjan Saini	21905
21	BOKSG36/00014/16-17	Seema Rani	42754
22	BOKSG36/00125/18-19	Mr. Prakhar Saxena	19570
23	BOKSG36/00015/16-17	Samta Sethia	25193
24	BOKSG36/00045/17-18	SAHABUDDIN	*
25	BOKSG36/00077/17-18	Sirsendu Chatterjee	35687
26	BOKSG36/00061/17-18	M/s. UNIQUE POWER SYSTEM	33914
27	BOKSG36/00126/18-19	Mr. Virender	34986
28	BOKSG36/00069/17-18	Rohan Bhasin	31464
29	BOKSG36/00131/18-19	Mr. Dharampal	129535
30	BOKSG36/00120/18-19	Mrs. Sneha Sharma	16722
31	BOKSG36/00054/17-18	Mr. AJAY KUMAR SETHI	35658
32	BOKSG36/00111/17-18	Mr. Ghanshyam Singh Ranga	23629
33	BOKSG36/00070/17-18	Mrs. MANJU SHARMA	33482
34	BOKSG36/00136/18-19	M/s. Primerose Decor Private Limited	32931
35	BOKSG36/00112/18-19	Mr. Anurag Sharma	27248
36	BOKSG36/00007/16-17	Shalini Jain	15282
37	BOKSG36/00047/17-18	GURPREET SINGH	61137
38	BOKSG36/00067/17-18	Mr. AVISHEK ROY	72784
39	BOKSG36/00108/18-19	Mrs. Manisha Mahato	23434
40	BOKSG36/00135/18-19	Mrs. Akhtary Khatoon	32909
41	BOKSG36/00068/17-18	Mrs. VIJAY LAXMI	27594
42	BOKSG36/00075/17-18	Mr. Dhan Singh	55138
43	BOKSG36/00022/16-17	Sangeeta Piplani	*
44	BOKSG36/00143/18-19	Mr. Jamsed Alam	73628
45	BOKSG36/00040/17-18	KAVITA	20586
46	BOKSG36/00129/18-19	Mr. Ajay Kumar Sethi	54165
47	BOKSG36/00106/17-18	Mrs. Usha Dubey	35398

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48	BOKSG36/00137/18-19	Mr. Rajnish Chopra	44727
49	BOKSG36/00122/18-19	Mrs. Kamna	66023
50	BOKSG36/00012/16-17	Mr. Iqbal	34795
51	BOKSG36/00025/16-17	Jasbeer Singh	9217
52	BOKSG36/00046/17-18	RUHINA PARVEEN	16110
53	BOKSG36/00140/18-19	Mr. Veer Pal Singh	38688
54	BOKSG36/00123/18-19	Mrs. Prachi Gupta	24114
55	BOKSG36/00119/18-19	Mr. Sukhbir Singh	25326
56	BOKSG36/00017/16-17	Namita Singh	23040
57	BOKSG36/00102/17-18	Jayant Agarwal	14203
58	BOKSG36/00117/18-19	Mr. Manish Jain	13733
59	BOKSG36/00074/17-18	Mr. ABHIJEET BARMAN	60593
60	BOKSG36/00013/16-17	Jai Bhagwan Yadav	43013
61	BOKSG36/00130/18-19	Mr. Lalit Kumar	48124
62	BOKSG36/00031/16-17	Ms. SUMAN YADAV	22795
63	BOKSG36/00050/17-18	Mr. NARENDER SINGH	56536
64	BOKSG36/00076/17-18	Mr. Renu Mittal	38933
65	BOKSG36/00044/17-18	REENA NATH	24634
66	BOKSG36/00083/17-18	Roopak Chawla	66964
67	BOKSG36/00049/17-18	Mrs. ASHA RANI GAUBA	50409
68	BOKSG36/00011/16-17	Asha Ram	34795
69	BOKSG36/00093/17-18	Mrs. Rupa Bhowal	59446
70	BOKSG36/00084/17-18	Mrs. Sheela Sawariya	44896
71	BOKSG36/00110/18-19	Mrs. Nita Jain	74046
72	BOKSG36/00038/17-18	SAURABH SINGH	25461
73	BOKSG36/00009/16-17	Mr. SACHIN KUMAR	21111
74	BOKSG36/00097/17-18	Mr. Hemant Gupta	29422
75	BOKSG36/00028/16-17	Bharat Singh	21111
76	BOKSG36/00124/18-19	Mrs. Ruchi Gupta	17259
77	BOKSG36/00010/16-17	Kapil Bakshi	19301
78	BOKSG36/00094/17-18	Mrs. Jyoti Sharma	87935
79	BOKSG36/00026/16-17	Isha Soien	36343
80	BOKSG36/00032/16-17	Anil Kumar	23218
81	BOKSG36/00090/17-18	Mr. CHHAVI NARAYAN SINGH	34380
82	BOKSG36/00051/17-18	Mr. PRADEEP KUMAR	44838
83	BOKSG36/00018/16-17	Khatija	22319
84	BOKSG36/00059/17-18	Mr. DINESH SINGH	44331
85	BOKSG36/00116/18-19	Mr. Rajat Khanna	24354
86	BOKSG36/00020/16-17	Rajesh Singh	*
87	BOKSG36/00127/18-19	Mrs. Shruti Sharda	28048
88	BOKSG36/00138/18-19	Mrs. Gazal Gupta	89385
89	BOKSG36/00144/19-20	Mr. Vimal Kumar Jaiswal	121695
90	BOKSG36/00091/17-18	Mrs. OM PARBHA ARORA	68543
91	BOKSG36/00035/16-17	Harish Bhardwaj	37467
92	BOKSG36/00073/17-18	M/s. PNP PROBUILD PVT.LTD	50954
93	BOKSG36/00064/17-18	Ms. POOJA GUPTA	51799
94	BOKSG36/00132/18-19	Mr. Ramkishan Bhaker	48703
95	BOKSG36/00134/18-19	Mr. Jay Prakash Sharma	52153
96	BOKSG36/00021/16-17	Manmohan Singh Bhalla	24744
97	BOKSG36/00133/18-19	Mr. Aminuddin Ansari	48576

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98	BOKSG36/00096/17-18	Mr. VIRENDER SINGH	69635
99	BOKSG36/00121/18-19	Mr. Ankur Gupta	46784
100	BOKSG36/00063/17-18	Mrs. SUMITA	68087
101	BOKSG36/00100/17-18	Mr. NARENDER SINGH	65803
102	BOKSG36/00088/17-18	Mr. RAM SINGH POONIA	61932
103	BOKSG36/00056/17-18	Mrs. MANJU SAJWAN	47312
104	BOKSG36/00055/17-18	Mr. TARUN SANDUJA	58000
105	BOKSG36/00118/18-19	Mr. Sukhbir Singh	24357
106	BOKSG36/00115/18-19	Mr. Kapil Goyal	30774
107	BOKSG36/00023/16-17	RAJEEV CHAUHAN	34954
108	BOKSG36/00109/18-19	Mr. Gadhiya Nagjibhai Hirabhai	37646
109	BOKSG36/00085/17-18	Mrs. Rajni Tyagi	44502
110	BOKSG36/00048/17-18	NAVED MUSARRAT	37131
111	BOKSG36/00065/17-18	Mrs. MITHLESH DEVI	38808
112	BOKSG36/00037/17-18	PRADEEP SHARMA	31471
		Total Profiteering Amount	42,21,321/-

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*:- No Amount indicated in the DGAP Report dated 19.03.2020 in Annexure 16.