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

Case No.	:	22/2022
Date of Institution	:	29.01.2021
Date of Order	:	20.06.2022

In the matter of:

1. Shri Niranjan Swain, Plot No. 973/3154, Prakruti Vihar Delta Area, Baramunda, Bhubaneshwar-751003.

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. LIC HFL Care Homes Ltd., IPICOL House, 3rd Floor, Janpath, Rupali Square, Bhubaneswar-751022, Distt. Khurda, Odisha.

Respondent

Quorum:-

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

Present:-

1. Sh. Niranjan Swain, Applicant No. 1 in person.

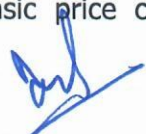
2. Sh. Lal Bahadur, Assistant Commissioner for the DGAP.

3. Sh. Dinesh Agrawal and Sh. Pranay Sahay for the Respondent.

ORDER

1. The Present Report dated 28.01.2021 has been received from 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 (**Rules**). The brief facts of the case are that the Standing Committee on Anti-profiteering, after being prima facie satisfied, had forwarded the complaint filed under Rule 128 of the CGST Rules, 2017 by Applicant No. 1 alleging profiteering by the Respondent in respect of the purchase of Flat no. 605 of Block No. A-3 in the project "Jeevan Ananda", situated at Plot Bhubaneswar, Mouja Aiginia, Khandagiri, Bhubaneswar, Khurda District. Applicant No. 1 has alleged that the Respondent had not passed on the benefit of Input Tax Credit (ITC) to him by way of commensurate reduction in prices and charged GST @12% on the demand raised post-GST. Applicant No. 1 had further alleged that he was allotted an under-construction flat on 18.08.2011 and had paid 90% of the consideration under the erstwhile Service Tax regime and the balance consideration was due to be paid under the GST regime. Further, the Applicant submitted the following documents along with his application in APAF-1:-

a. Copy of Allotment Letter dated 18.08.2011 along with Brochure of the project.
b. Copies of letters dated 19.11.2019, 20.02.2020 & 17.06.2020 written by the Applicant requesting the Respondent to recalculate the basic price considering benefit of ITC in the GST regime.
c. Copy of Aadhar Card.



d. Copy of Demand Letter dated 13.01.2020.

e. Copy of Reply dated 24.12.2019 given by the Respondent wherein it was stated that "the cost of flats was exclusive of taxes and hence the allottees had paid the Service Tax before GST- regime accordingly. In the GST regime, the GST amount as applicable had been charged as per prevailing laws in this regard. Allottees registered with GST number could claim the ITC towards GST paid by them."

2. Vide the above-mentioned Report, the DGAP has stated:-

a. That on receipt of the reference from the Standing Committee on Anti- Profiteering on 15.10.2020, a Notice under Rule 129 of the Rules was issued on 09.11.2020, calling upon 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 to furnish all documents in support of his reply.

b. That vide letter dated 21.12.2020, the Respondent requested to provide a copy of the Minutes of the Standing Committee's meeting along with the complaint filed by the Applicant, which were provided to the Respondent vide the DGAP's letter dated 06.01.2021.

c. That the period covered by the current investigation was from 01.07.2017 to 30.09.2020.

d. That vide various letters/e-mails dated 30.11.2020, 21.12.2020, 12.01.2021 and 14.01.2021, Respondent submitted the following documents/information:

i. Copies of GSTR-1 Returns for the period July 2017 to September 2020.
ii. Copies of GSTR-3B Returns for the period July 2017 to September 2020.
iii. GSTR-9/9C for the FY 2017-18 & 2018-19.
iv. Copies of ST-3 Returns for the period April 2016 to June 2017.
v. Tax rates - pre-GST and post-GST.
vi. Copies of audited Balance sheets for FY 2016-17 to 2019-20.
vii. Copies of the Sale agreement, all Demand Letters, Payment Receipts, and Sub Lease Deed entered with the Applicant.
viii. Copy of Electronic Credit Ledger for the period July 2017 to September 2020.
ix. Declaration in Annexure-IV to Notification No. 3/2019-CT (Rate) dated 29.03.20219.
x. CENVAT/Input Tax Credit register for the period April 2016 to November 2019.
xi. Details of VAT, Service Tax and GST turnover, output tax liability payable and ITC availed for the project "Jeevan Ananda".
xii. Copy of Long term Lease deed with Government of Odisha for procurement of land.
xiii. Copy of Occupancy Certificate no. 27896 dated 25.11.2019.
xiv. Copy of RERA Registration Certificate dated 30.08.2018 along with all project progress reports submitted to RERA up to September 2020.
xv. List of home buyers & commercial shop buyers in the project "Jeevan Ananda".
xvi. The approved cost of the project "Jeevan Ananda".
xvii. Pro-rated computation of benefits.

e. That in response to the Notice dated 09.11.2020 and subsequent reminders, Respondent replied vide above-said letters/e-mails and the same were summed up as follows: -

i. The Respondent had successfully developed two projects in Bengaluru, Karnataka (Jeevan Anand Phase I and Jeevan Anand Phase II). These projects were completed way back in 2007 and 2014, respectively. At present, the Respondent had only one ongoing project, namely "Jeevan Ananda" located at Bhubaneswar, which was commenced in the year 2011.

ii. The project was registered under Odisha Real Estate (Regulation and Development) Rules 2017 with registration no. MP/19/2018/00170.

iii. The Respondent had obtained the parcel of land for the development of the project on a long-term lease contract executed with the Government of Odisha on 7.11.2007 for a period of 90 years. As per the terms of the Land Lease contract, the said land could be used by the Respondent for the construction of buildings and structures for commercial and residential establishments. The Respondent had appointed various contractors for conducting various activities, including construction works, water treatment works, procurement and installation of lifts, power transmission and supply works, firefighting contracts, etc.

iv. Before the implementation of Goods and Services Tax, taxes applicable on construction activities included Service Tax on the provision of construction services and Value Added Tax (VAT) on the transfer of property in goods involved in the execution of the works contract. Since the entire construction contract was outsourced by the Respondent to various contractors, he was not liable to pay VAT under Section 10(4a)(b) of the Odisha VAT Act, 2004. Hence, he had not obtained registration under Odisha VAT Act 2004. Consequently, the Respondent was neither charging VAT from the home buyers nor availing any ITC of VAT paid on goods used/involved in the project.

v. For Service Tax, the Respondent was registered and paying tax under the composition scheme provided under Rule 2A of the Service Tax (Determination of Valuation) Rules, 2006 on 30% of the total amount charged for the Works Contract. As per the said Rule 2A, the Respondent was not eligible to avail CENVAT Credit of Excise Duty paid on goods (i.e. inputs) used in the development of the Project. However, he was eligible to avail CENVAT Credit of Service Tax paid on all input services used in the Project. As Service Tax paid on input services was fully creditable, Service Tax paid on input services was not considered as project cost.

vi. With the implementation of GST effective 01.07.2017, the Respondent migrated to the GST regime and obtained registration in the State of Odisha under the GST Laws. In the GST regime, the activities of the Respondent were regarded as a supply of service under Schedule II (Entry 5B or Entry 6) of the CGST Act 2017. For valuation under the GST regime, the Respondent was eligible to avail abatement on the value of land (i.e. 1/3rd of the amount charged) for the purpose of computing GST liability under Notification No. 11/2017-CT(R) dated 28 June 2017. Therefore, the Respondent was charging GST on 2/3rd of the amount charged by it from the home buyers post implementation of GST. The GST rate was 18%, hence, the effective rate of GST charged by the Respondent was 12% after availing of the 1/3rd abatement.

vii. The Respondent completed the Project in November- 2019 and received Occupancy Certificate No. 27896/BDA, Bhubaneshwar dated 25.11.2019 from the Bhubaneshwar Development Authority.

viii. He was eligible to claim credit of Service Tax paid on input services, but he was not eligible to take any credit of VAT paid on the 'goods' purchased/used in the Project. However, in the present GST regime, there was no restriction on availing ITC of GST paid on goods used in the project, and to that extent, there might be an ITC benefit. Break-up of the goods and services procured in the GST regime was given in Table-'A' below:-

Table-'A'

Period	Value of inward goods	GST paid on inward goods	ITC availed on inward goods	Value of inward services	GST paidon inward services	ITC availed on inward services	Total ITC availed
2017-18	46,15,000	8,30,700	8,30,700	5,51,57,002	99,28,261	99,28,261	1,07,58,961
2018-19	1,93,660	34,860	34,860	4,64,04,758	83,52,856	83,52,856	83,87,716
2019-20	26,61,769	4,79,119	4,79,119	81,80,207	14,64,084	14,64,084	19,43,203
2020-21	24,022	4,324	4,324	51,48,041	9,26,650	9,26,650	9,30,974
Total	74,94,451	13,49,003	13,49,003	11,48,90,008	2,06,73,381	2,06,71,791	2,20,20,794

ix. The Respondent had availed ITC of Rs.13,49,003 on the goods which were not available in the erstwhile VAT regime, and therefore the Respondent stated that Rs. 13,49,003 was the benefit arising out of an increase in ITC to him which needed to be passed on to the customer. Accordingly, suitable credit notes would be issued in due course to the customers.

x. The cost other than tax, e.g. increase in process raw material and other facilities such as sub-station of 24X7 power supply should equally merit due adjustment for determination of alleged profiteering, and/or issuance of credit notes to the home buyers under the escalation clause if any.

f. That the documents/information including annexures submitted were business-sensitive and requested to keep them strictly confidential in terms of Rule 130 of the CGST Rules, 2017 except the following:-

i. Tax rates - pre-GST and post-GST.
ii. Copies of audited Balance sheets for FY 2016-17 to 2019-20.
iii. Copy of Occupancy Certificate no. 27896 dated 25.11.2019.

g. That vide e-mail dated 14.01.2021 the Applicant was given an opportunity on 19.01.2021/20.01.2021 to inspect the non-confidential documents/reply furnished by the Respondent. Accordingly, Sh. Siba Sekhar Rath and Sh. Yogesh Khandelwal visited the DGAP on behalf of Applicant No. 1 and availed the said opportunity on 19.01.2021 by inspecting the non-confidential documents/reply furnished by the Respondent.

h. That the reference received from the Standing Committee on Anti-profiteering, various replies of the Respondent, and the documents/evidence on record had been carefully scrutinized. The main issues for determination are:

(i) Whether there was the benefit of reduction in the rate of tax or ITC on the supply of construction service by the Respondent, on implementation of GST w.e.f. 01.07.2017 and if so,

(ii) Whether such benefit was passed on by the Respondent to the recipients, in terms of Section 171 of the CGST Act, 2017.

i. That the Respondent, vide e-mail dated 21.12.2020, submitted copies of demand letters, payment receipts, and sale agreement for the sale of flat no. 605 Block No. A-3, Type-B to Applicant No. 1, measuring 1259 square feet, at a base price of Rs. 36,50,000/-. The schedule of payment was furnished in Table-'B' below.

Table-'B' (Amount in Rs.)

S. No.	Due Date	Payment Stage	(Basic) %	Basic Amount	Other Charges	Service Tax	GST	Total Amount
1	26.07.2011	At the time of Application	50%	18,25,000	-	47,000	-	18,72,000
2	05.03.2012	On completion of foundation and plinth beam	20%	7,30,000	-	18,800	-	7,48,800
3	15.07.2013	On Completion of R.C.C Frame Work	20%	7,30,000	-	22,557	-	7,52,557
4	31.12.2019	On Completion of the project at the time of takingthe Possession	10%	3,65,000	-	-	43,800	4,08,800
		Escalation Cost	-	-	4,56,000	-	54,720	5,10,720
		Covered Car Parking	-	-	1,50,000	-	18,000	1,68,000
		Interest on Covered Car Parking	-	-	1,00,000	-	-	1,00,000
		Maintenance Charges	-	-	84,746	-	15,254	1,00,000
	Total		100%	36,50,000	7,90,746	88,357	1,31,774	46,60,877

j. That the Respondent had a single project, "Jeevan Ananda" which was registered under Odisha Real Estate (Regulation and Development) Rules 2017 with Registration No. MP/19/2018/00170. The Respondent had contended that there was no benefit of ITC as much as services were concerned. The input or input service-wise availability or non-availability of ITC before and post-implementation of GST had not been examined. Further, there should be no extra liability on the Respondent on account of the increase in the rate in GST compared to Service Tax as the supplier of input services was now also enjoying ITC on all the purchases made by him resulting in a reduction in prices of the materials purchased by him which should pass on to the Respondent.

k. That in the erstwhile pre-GST regime, various taxes and Cess were being levied by the Central Government and the State Governments, which got subsumed in the GST. Out of these taxes, the ITC of some taxes was not being allowed in the erstwhile tax regime. For example, the ITC of Central Sales Tax, which was being collected and appropriated by the States, was not admissible. Similarly, in the case of construction service, while the ITC of Service Tax was available, the ITC of Central Excise Duty paid on inputs was not available to the service provider. Such input taxes, the credit of which was not allowed in the erstwhile tax regime, used to get embedded in the cost of the goods or services supplied, resulting in increased prices. With the introduction of GST with effect from 01.07.2017, all these taxes got subsumed in the GST and the ITC of GST was

available in respect of all goods and services unless specifically denied. This additional benefit of ITC in the GST regime was required to be passed on by the suppliers to the recipients by way of a commensurate reduction in price, in terms of Section 171 of the CGST Act, 2017.

l. That the reference was also made to the para 5 of Schedule-III of the CGST Act, 2017 (Activities or Transactions which shall be treated neither as a supply of goods nor a supply of services) which reads as "Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building". Further, clause (b) of Paragraph 5 of Schedule II of the CGST Act, 2017 reads as"(b) construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration had been received after issuance of the completion certificate, where required, by the competent authority or after his first occupation, whichever was earlier". Thus, the ITC on the residential units and commercial shops which were under construction but not sold was provisional ITC which might be required to be reversed by the Respondent, if such units remain unsold at the time of issue of the completion certificate, in terms of Section 17(2) & Section 17(3) of the CGST Act, 2017, which read as under:

> *Section 17 (2) "Where the goods or services or both was used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act and partly for effecting exempted supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as was attributable to the said taxable supplies including zero-rated supplies".*
>
> *Section 17 (3) "The value of exempted supply under sub-section (2)shall be such as might be prescribed and shall include supplies on which the recipient was liable to pay tax on reverse charge basis,transactions in securities, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building".*

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

However, in the present case, all the 240 residential units and 3 commercial shops had been sold before 2013 whereas Occupancy Certificate was obtained much later in November 2019. Therefore, there was no unsold unit at the time of receipt of the Occupancy Certificate.

m. That as regards the allegation of profiteering, it was observed that before 01.07.2017, i.e., before the GST was introduced, Respondent claimed that he was eligible to avail CENVAT credit of Service Tax paid on Services but no credit was available in respect of the Central Excise Duty and VAT paid on the inputs. However, post-GST, the Respondent could avail ITC 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 September 2020, the details of the ITCs availed by him, his turnover from the subject project "Jeevan Ananda", the ratios of ITC to turnovers, during the pre-GST (April 2016 to June 2017) and post-GST (July 2017 to September 2020) periods, were furnished in Table- 'C' below:-

Table-'C' (Amount in Rs.)

S. No.	Particulars	April 2016 to June 2017(Pre-GST)	July 2017 to Sept. 2020 (Post-GST)
(1)	(2)	(3)	(4)
1	CENVAT of Service Tax Paid on Input Services as per ST-3 return (A)	-	-
2	ITC of VAT Paid on Purchase of Inputs (B)	-	-
3	Input Tax Credit of GST Availed (C)	-	2,20,20,794
4	Total CENVAT/ITC Availed (D)= (A+B) or (C)	-	2,20,20,794
5	Turnover for Residential Flats & Shops as per Home Buyers List (E)	3,10,000	14,09,91,429
6	Total Saleable Area (in SQF) (F)	2,70,048	2,70,048
7	Total Sold Area relevant to Turnover (G)	517	2,03,419
8	Relevant CENVAT/ITC [(H)= (D)*(G)/(F)]	-	1,65,87,599
Ratio of CENVAT/Input Tax Credit to Turnover [(I)= (H)/(E)		0.00%	11.76%

n. From the above Table- 'C', 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% whereas, during the post- GST period (July 2017 to March 2019), the percentage was 11.76%. This clearly confirmed that post-GST, the Respondent had benefited from additional ITC to the tune of 11.76%% [11.76% (-) 0%] of the turnover.

o. Accordingly, the profiteering had been examined by comparing the applicable tax rate and ITC available in the pre-GST period (April 2016 to June 2017) when Service Tax @4.5% was payable with that during the post-GST period (July 2017 to September 2020) 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 'C above, the comparative figures of the ratio of ITC availed/available to the turnover in the pre-GST and post-GST periods as well as the turnover, the recalibrated base price, and the excess realization (profiteering) during the post-GST period, was tabulated in Table- 'D' below:-

Table-'D' (Amount in Rs.)

S. No.	Particulars		Post- GST
1	Period	A	01.07.2017 to 30.09.2020
2	Output GST Rate (%)	B	12.00
3	The ratio of CENVAT credit/ ITC to TotalTurnover as per table - 'C' above (%)	C	11.76%
4	Increase in ITC availed post-GST (%)	D= 11.76% less 0.00%	11.76%
5	<u>Analysis of Increase in input tax credit:</u>		
6	Base Price raised/collected during July, 2017 toSeptember, 2020 (Rs.)	E	14,09,91,429
7	GST @ 12% over Base Price	F=E*12%	1,69,18,971
8	Total amount to be collected/raised	G=E+F	15,79,10,400

9	Recalibrated Base Price	H= (E)*(1-D) or 88.24% of (E)	12,44,10,837
10	GST @12%	I=H*12%	1,49,29,300
11	Commensurate demand price	J=H+I	13,93,40,137
12	Excess Collection of Demand or ProfiteeringAmount	K=G-J	1,85,70,263

p. From Table-'D' above, it may be deduced that the additional ITC of 11.76% 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 the respective recipients.

q. From the above calculation, it was evident that based on the aforesaid CENVAT/input tax credit availability in the pre and post-GST periods and the details of the amount raised/collected by the Respondent from the Applicant No. 1 and other home buyers during the period 01.07.2017 to 30.09.2020, the Respondent had benefited by an additional amount of ITC, by an amount of Rs. 1,85,70,263 /- which included GST @12% on the base amount of Rs. 1,65,80,592/-. The buyers and unit-wise break-up of this amount were given in Annex-10. This amount was inclusive of Rs. 1,27,892/- (including GST on the base amount of Rs. 1,14,189/-) which was the benefit of ITC required to be passed on to the Applicant No. 1, mentioned at serial no. 143 of Annex-10 to the Report.

r. Based on the details of outward supplies of the construction service submitted by the Respondent, it was observed that the said service had been supplied by the Respondent in the State of Odisha only.

s. That the benefit of additional ITC to the tune of 11.76% of the turnover had accrued to the Respondent post-GST and the same was required to be passed on by him to the respective recipients. On this account, the Respondent had realized an additional amount to the tune of Rs. 1,27,892/- from the Applicant. Further, the investigation reveals that the Respondent was required to pass on the additional benefit of ITC amounting to Rs. 1,84,42,371 /- to 183 other recipients who were not Applicants in the present proceedings. These recipients were identifiable as per the documents provided by the Respondent, giving the names and addresses along with Unit No. allotted to such recipients. Therefore, this additional amount of Rs. 1,84,42,371/- was required to be returned to such eligible recipients. As observed earlier, the Respondent had supplied construction services in the State of Odisha only.

t. That the present investigation covered the period from 01.07.2017 to 30.09.2020. Profiteering, if any, for the period post-September 2020, had not been examined as the exact quantum of ITC that would be available to the Respondent in the future cannot be

determined at this stage, when the Respondent was continuing in availing ITC in respect to the present project.

u. The DGAP has concluded that Section 171(1) of the CGST Act, 2017, requires that "any reduction in the 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 i.e. "M/s. LIC HFL Care Homes Ltd." in the present case.

3. The above Report was considered by this Authority and a Notice dated 04.02.2021 was issued to the Respondent to explain why the Report dated 28.01.2021 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. The Respondent was directed to file written submissions, which he has filed on 15.03.2021, wherein the Respondent, inter alia, in addition to submissions already mentioned in the Report, has submitted:-

a. That the Project was completed in November 2019 and Occupancy Certificate No. 27896/BDA, Bhubaneshwar dated 25 November 2019 was received from the Bhubaneshwar Development Authority.
b. That the methodology adopted by the DGAP was incorrect in as much as it considered the percentage of ITC "availed" in the pre-GST and post-GST regimes as a percentage of total Turnover. It was submitted that as opposed to determining the benefit of ITC considering credit "availed", the DGAP should actually determine the benefit of ITC by considering ITC "available" to determine the benefit of ITC and the quantum of profiteering.
c. That the entire basis of anti-profiteering provisions revolves around the fact that with the introduction of GST, credit of certain taxes that was not available to the service providers in the erstwhile regime became eligible with the introduction of GST (for instance credit of Excise Duty that was not available to service providers). Thus, the cost of the provision of service should be reduced to such an extent and should be passed on to the consumer.
d. That there was a complete contradiction in the manner in which determination had been made by the DGAP in his Report and the manner in which the intent of the provisions of Section 171 of the CGST Act had been explained by the DGAP. While explaining the purport and the intent of Section 171 the DGAP had clearly used the words "available" and "not available", the computation (of benefit arising out of ITC) had been made by the DGAP based on ITC actually "availed" in the pre-GST and post-GST regime. It was submitted that the provisions of Section 171 applied only in two situations prescribed therein, one of which was that there might be a benefit of ITC arising out of the introduction of GST. In this connection, it was further submitted that even if the Respondent inadvertently had not availed credit of "services" in the erstwhile regime, the same cannot be considered for determining the benefit of ITC (for Section 171) because of the following reasons:

i. Section 171 intends to pass on the benefit of reduction in the cost of provision of service (or production of goods) due to the introduction of GST.

ii. The credit of input tax which was available in the erstwhile regime and was also available in the GST regime cannot (by any stretch of imagination) be regarded as giving rise to a benefit of ITC due to the introduction of GST. "Services" were fully creditable (for construction services) in the erstwhile as well as in the GST regime and therefore, the benefit of ITC cannot arise on account of services.

iii. While it might be argued that since the credit of tax paid on services was not availed as credit in the erstwhile regime and therefore embedded in the cost of provision of service provided by the Respondent, however, it must be appreciated that such a situation could not give rise to a benefit due to implementation of GST for the simple reason that such non-availment and availment of credit was the prerogative of the assessee and not dependent upon the implementation of GST.

iv. The DGAP report itself acknowledges the fact that it had not examined the input/input service-wise availability / non-availability before and post GST implementation.

e. That considering the above, it was submitted that any benefit of ITC that could arise to him could only be on account of ITC of GST paid on the purchase of goods in the post-GST regime. Admittedly, in respect of goods, he had availed ITC of Rs. 13,49,003/- on the Central Excise duty paid which was not available in the erstwhile VAT regime, and therefore it could be stated that Rs. 13,49,003/- was the benefit arising out of the increase in ITC that he needed to be passed on to the homebuyer. He was in the process of issuing suitable credit notes and these would be issued in due course to the homebuyers.

f. That assuming without admitting that the above proposition was not accepted, the benefit arising out of the increase in ITC to him on account of procurement of services had also been miscomputed by the DGAP. It was an admitted fact that the rate of service tax on the supply of taxable services in the erstwhile regime was 15% whereas the rate of GST on the supply of taxable services in the GST regime was 18%, thus he had paid an additional tax of 3% on the same service. This additional burden of tax could not be brought within the ambit of the benefit arising out of the increase in ITC. 3% ITC on this count was not a benefit as he had paid this in the GST regime which otherwise under the erstwhile regime, was not required to be paid. Thus, the quantum of ITC (on an illustrative basis) for the purpose of Section 171 needed to be re-worked as below:-

Period	ITC availed on inward goods	GST paid on inward services @18%	Additional burden @3% on services	The benefit from the increase in ITC for services	Total ITC availed	ITC covered u/s 171 for goods & services
2017-18	8,30,700	99,28,261	16,54,710	82,73,551	1,07,58,961	91,04,251
2018-19	34,860	83,52,856	13,92,143	69,60,713	83,87,716	69,95,573
2019-20	4,79,119	14,64,084	2,44,014	12,20,070	19,43,203	16,99,189
2020-21	4,324	9,28,180	1,54,697	7,73,483	9,32,504	7,77,807
Total	13,49,003	2,06,73,381	34,45,564	1,72,27,818	2,20,22,384	1,85,76,821

Accordingly, the Respondent has re-computed the alleged profiteering as below:

No	Particulars	July 2017 to September 2020 (Post GST)	Recomputed
1	CENVAT Credit of Service Tax paid on input services as per ST3 returns (A)	-	
2	ITC of VAT paid on inputs (B)	-	
3	Input Tax Credit of GST Availed (C)	2,20,20,794	1,85,76,821
4	Total CENVAT/ITC Availed (D)= (A+B) or (C)	2,20,20,794	
5	Turnover for Residential Flats & Shops as per Home Buyers List (E)	14,09,91,429	14,09,91,429
6	Total Saleable Area (in SQF) (F)	2,70,048	2,70,048
7	Total Sold Area relevant to Turnover (G)	2,03,419	2,03,419
8	Relevant CENVAT/ITC [(H)= (D)*(G)/(F)]	1,65,87,599	1,39,93,358
Ratio of CENVAT/Input Tax Credit to Turnover [(I)= (H)/(E)		11.76%	9.92%

g. That the findings of the DGAP could not be accepted as the same suffered from incorrect assumptions without any verification. In Para 13 of the Investigation Report, the DGAP had recorded his finding that there should be no extra liability on the Respondent on account of the increase of rate in GST as compared to Service Tax because the supplier of input services was now enjoying the benefit of ITC on all purchases made by him resulting in a reduction in prices of the material purchased by him which should have been passed on to the Respondent. While the DGAP Report made the above finding, it failed to record any basis in support of such finding. The DGAP had not made any effort to verify whether the suppliers of Respondent had actually benefited from the implementation of GST and whether such benefit had actually been passed on by him to the Respondent, before making such a finding. It was submitted that in absence of any concrete observation, the finding of the DGAP could only be regarded as a mere assumption (and not a finding).

h. That the investigation by the DGAP failed to provide any reason as to why it had only considered the period between April 2016 to June 2017 as the pre-GST period to compute the percentage of benefit arising out of ITC. It was an accepted fact that the Respondent had commenced his project in the year 2011 and most of the work related to the project was executed

before the introduction of GST. Therefore, it was prudent to consider the aggregate of ITC available to the Respondent on the entire project (since inception) and compare the same with the aggregate turnover (since 2011). Further, it was also possible that the Respondent might not have received any revenue during the aforesaid period for any reason (one of the prominent features of the construction industry was that the project was stalled for a long period on account of legal disputes), in which case the mathematical formula applied by the DGAP was bound to fail.

i. In addition to the above the Respondent submitted that the report of DGAP was biased on the following counts:

i. DGAP failed to recognize and consider submissions made by the Respondent regarding the cost incurred by the Respondent on setting up and installation of power sub-station in the Project (which had not been considered in the cost of the project to date) and other additional costs should be adjusted before determining the quantum of profiteering.

ii. DGAP failed to recognize and consider submissions made by the Respondent regarding the fact that the Respondent had not charged any amount towards the escalation of price since 2013.

j. Rule 126 of the CGST Rules provided that the authority might prescribe the methodology and procedure for the determination as to whether the benefit of ITC had been passed on by the assessee to the recipient by way of a commensurate reduction in price. It was submitted that no methodology/procedure for the determination as to whether the reduction and rate of tax had been passed on or whether the increased benefit of ITC had been passed on had been laid down to date. Additionally, there was no definition of "profiteering" provided for under the CGST Act.

k. It was settled legal principle that where there was no machinery for assessment, the law being vague, it would not be open to the authority to arbitrarily assess to tax the subject. Therefore, the findings of the DGAP ought to be set aside and no action might be taken under Section 171 of the CGST Act read with Rule 126 of the CGST Rules till the mechanism or guidelines were framed for determining the benefit accrued to a consumer on account of benefit of ITC.

l. The Respondent has placed reliance on the decision of the Hon'ble Supreme Court in the case of ***Commissioner, Central Excise and Customs, Kerala versus Larsen and Toubro Limited (2016) 1 SCC 170***, wherein it was held that where there was no machinery for assessment, the law being vague, it would not be open to the assessing authority to arbitrarily assess to tax the subject.

m. That the DGAP, in his report, had stated that the benefit arising out of ITC had been arrived at by the DGAP by comparing the percentage of ITC availed by the Respondent with the total turnover in the pre-GST regime with that of the post-GST regime. The above methodology could not be adopted to compute the exact amount of benefit that accrued to a provider of service on account of the availability of ITC by the introduction of GST. One of the apparent flaws in this mechanism

was that the ratio of ITC (in percentage terms) was based on the quantum of turnover during the said period. For instance, if the last installment (which was due in the GST regime) was increased to 50% (from the existing 10%) the ratio of ITC to turnover would severely get affected and the profiteering might also be determined as a negative figure (mathematically). In such a situation, while the DGAP might state that there was no profiteering by the Respondent, but the fact would remained that the Respondent had started availing certain credits (which were not available in the erstwhile period) due to the introduction of GST and therefore, the benefit of ITC does exist.

n. To determine the quantum of profiteering, it was essential that the element of credit (in the pre and post-GST regimes) must not be compared with the turnover. The benefit of ITC should be determined only as a function of ITC alone. One of the manners in which this could be achieved was that the DGAP might examine the procurements made by the Respondent described as under:

i. Examine the entire procurement made by the Respondent in the post-GST regime;
ii. Compute the credit that would otherwise been available to the Respondent if GST was not implemented;
iii. Determine the total amount of ITC available under the GST regime;
iv. Compare the resultant figures of (c) and (b) above to determine the benefit of ITC actually that resulted from the implementation of GST.

o. Since the methodology adopted by the DGAP was clearly questionable, unexplainable, and not free from doubts, the findings made by the DGAP based on such an investigation should not be adopted and therefore, the allegation of profiteering made based on such findings was liable to be dropped.

p. That the Constitution of India under Article 19(1)(g) guaranteed fundamental rights to carry business and trade to the shareholders and promoters of the Respondent. The Hon'ble Supreme Court of India had held time and again that the word "business" occurring in Article 19(1)(g) of the Constitution was to protect all activities done for profit and not for pleasure or charity. Reliance in this regard was placed on the judgment of Sodan Singh & Ors. vs New Delhi Municipal Committee & Ors. (1989) 4 SCC 155.

q. That any person conducts business for realizing a profit. Profit was nothing but a financial gain, being the difference between the amount earned and the amount spent in buying, operating, or producing something, or in simpler terms, the surplus over costs. It was submitted that any law which ignores cost or fails to protect profit violates the fundamental rights of citizens enshrined under Article 19(1)(g) of the Constitution of India.

r. That the fundamental right enshrined in Article 19(1)(g) of the Constitution of India could be reasonably restricted in terms of the prescription provided in Article 19(6) thereunder. Article 19(6), inter alia, provides for an exception to Article 19(1)(g) if the said restriction was reasonable in nature. However, in such cases also the Hon'ble Supreme Court had held that if the price does not secure a reasonable return on the capital employed, such fixation was liable to be challenged as violating Article 19(1)(g) of the Constitution. Thus, while considering the rate of tax and the amount of ITC for determination of profiteering under section 171 of the CGST Act, direct or indirect increase in cost of production and/or cost of supply must also be considered to protect the

fundamental right to carry business as enshrined under Article 19(1)(g) of the Constitution of India. Ignoring the increased cost of production and/or cost of supply would compel the Respondent to suffer loss and thereby, infringe the fundamental rights guaranteed under Article 19(1)(g). Hence such an interpretation must necessarily be eschewed by this Authority.

s. If the increase in cost was not considered/ allowed in the formulation of price fixation under Section 171 of the CGST Act, it would directly offend the fundamental right to carry on business. Further, if the increase in cost was not incorporated, it would amount to price control, which was unsustainable in law. Reliance in this regard could be placed on the order dated 01 June 2012 of the Hon'ble High Court of Delhi in Indraprastha Gas Limited Vs Petroleum and Natural Gas Regulatory Board in W.P. No. 2034 of 2012, wherein it was as under:

> *"Prices were generally governed/ regulated by market forces. Price fixation/regulation/control was essentially a clog on the freedom of trade and commerce conferred the status of a fundamental right. However, wherever the circumstances so justify, the same had been treated as a reasonable restriction. However, such restriction on fundamental right had to be by legislative mandate only."*

t. That the Respondent had incurred certain additional costs (direct cost) in the project which had not been passed on by it to the recipients. Therefore, the adjustment in respect of such cost should be accorded by the Authority while determining the profiteered amount.

u. That brochure was an integral part of the contract with home buyers. According to one of the conditions of the brochure, the Respondent was entitled to claim additional consideration by invoking the price escalation formula prescribed in the brochure. The Respondent had also not provided for cost escalation in respect of his projects since 2013. Therefore, non-recovery of price escalation must also be factored in while computing the alleged profiteered amount.

v. That the details regarding the estimated cost of setting up of power sub-station were enclosed. Further, the Respondent had also not provided for cost escalation in respect of his projects since 2013. Therefore, any increase in the cost of procurement of materials due to the introduction of GST had not been factored in by the DGAP in computing the profiteering amount.

4. Supplementary Report under Rule 133(2A) of the CGST Rules, 2017 was sought from the DGAP on the above submissions of the Respondent. In response, the DGAP vide his Report dated 31.03.2021 has inter-alia furnished the following clarification:-

a. The Respondent has misconstrued para-13 of the Report dated 28.01.2021. In this regard, reference was made to provisions of Section 171(1) of the CGST Act, 2017. In terms of the provisions, the ITC availed by the Respondent needed to be quantified & passed on to the recipients, which had been quantified in the DGAP's report dated 28.01.2021. The contentions raised by the Respondent in these paras were incorrect & misleading, as the Respondent had not considered all non-creditable taxes embedded in the cost of the project such as SBC, Value Added Tax embedded in material purchases (by Input service providers) which was now available as ITC to the input service providers and

consequently to the Respondent. Further, the Respondent was considering incremental credit on goods portion only whereas Section 171 of the CGST Act, 2017 requires that the benefit of ITC should be passed on to the recipients by a commensurate reduction in prices. The above provision nowhere stipulates that the above benefit was to be passed on only on the ITC which was availed on account of the purchase of goods. For computing the benefit of ITC, the CENVAT/ITC availed during the pre-GST period had to be compared with ITC availed post-GST implementation and hence these computations had to be made based on overall figures of ITC and turnovers, which have been furnished by the Respondent himself, through his Tax Returns and ITC registers. As per CGST Act, no bifurcation of the ITC was permissible on account of the goods and services purchased nor were separate records of the same required to be maintained. Therefore, the above claim of the Respondent was not tenable.

b. The methodology adopted by the DGAP was correct and strictly as per the law enshrined in Section 171 of the CGST Act.

c. Further in the Report dated 28.01.2021, the increase in ITC as a percentage of total taxable turnover availed by the Respondent post-GST had been quantified. The input or input service-wise availability or non-availability of ITC before and post-implementation of GST had not been examined. Further, there should be no extra liability on the Respondent on account of the increase in the rate in GST compared to Services Tax as the supplier of input services was now also enjoying ITC on all the purchases made by him resulting in a reduction in prices of the materials purchased by him which should pass on to the Respondent.

d. It was also observed that the Respondent had claimed ITC availed on the goods portion was Rs. 13,49,003/- only, where from the Annex-D enclosed with his aforesaid submission dated 15.03.2021, it could be noted that the ITC amounting to Rs. 40,25,472/- was availed on the Power Sub-station works itself.

e. The Respondent re-computed the ratio of CENVAT/Input Tax Credit to turnover in the post-GST period as 9.92% as compared to this ratio computed by the DGAP as 11.76% by reducing the ITC by Rs. 34,45,564/- (on account of the additional tax burden of 3% in GST Regime) and submitted that the profiteered amount must be recomputed considering profiteering ratio of 9.92%. In this regard, the submission of the Respondent cannot be accepted due to the reasons provided in the reply.

f. The DGAP had done a thorough investigation in terms of Section 171 of the CGST Act, 2017 based on the documents and information submitted by the Respondent and the Applicant No. 1 and accordingly submitted the report dated 28.01.2021 under Rule 129 (6) of the CGST Rules, 2017 establishing the

profiteering to the tune of Rs. 1,85,70,263/-.

g. Further, DGAP in his Investigation Report dated 28.01.2021 considered the period from April 2016 to June 2017 (15 months) in the pre-GST Regime. The whole purpose of taking a period of 15 months was to cover a reasonable period just before the GST so that an appropriate assessment of the percentage of ITC availed by the Respondent could be arrived at. Further, during this period there was no variation in the rate of tax on services and before that, there were several changes in the rate of service tax as well as changes in the conditions for eligibility of availing CENVAT Credit of Service Tax and Excise Duty including the rate of abatement, etc. which would result in a distorted picture of CENVAT. Thus, the aforesaid period was taken to calculate the average ratio of ITC availed with turnover. The ratio of ITC and turnover in Pre-GST was compared with the ratio of ITC post-GST. The period during the GST period might be one month or one year, depending upon the period of investigation. It does not mean that if the period was larger than the availment of ITC would increase or decrease but it only gives a ratio that represents the period for comparison. It was a standard practice at DGAP to take the pre-GST period from 01.04.2016 to 30.06.2017 and had been followed in all cases. These cases had also been upheld by NAA.

h. The Respondent had charged escalation cost from the homebuyers which was evident from the payment schedule provided in the Project brochure wherein it was inter-alia mentioned that:

> *.........4th installment (10% of basic price plus escalations):*
> *On completion of Project at the time of taking possession.*

Accordingly, an amount of Rs. 5,10,720/- including GST had been appropriated from the homebuyers towards the Escalation Charges by the Respondent as was evident from Table-'B' in Para 12 of DGAP Report dated 28.01.2021.

i. That the main contours of the 'Procedure and Methodology for passing on the benefits of reduction in the rate of tax and the benefit of ITC were enshrined in Section 171 (1) of the CGST Act, 2017 itself which states that *"Any reduction in rate of tax on any supply of goods or services or the benefit of ITC shall be passed on to the recipient by way of commensurate reduction in prices."*

j. Therefore, Section 171 itself provides the procedure and methodology for determination of the profiteered amount, and therefore, no guidance was required to be provided. The Respondent had got the benefit of ITC which he was required to pass on. It was also submitted that the facts of each case were different so the quantum of profiteering was determined by taking into account the particular facts of each case. Hence, there cannot be a one-size-fits-all mathematical methodology. It was also submitted that the additional ITC which

had accrued to him on account of the implementation of the GST was required to be passed on to the customers, but a straight-jacketed approach was not feasible as the facts of each case vary substantially.

k. In one real estate project, the date of start and completion of the project, price of the house/commercial unit, mode of payment of the price, stage of completion of the project, the timing of the purchase of inputs, rates of taxes, amount of ITC availed, total saleable area, area sold and the taxable turnover realized before and after the GST implementation would always be different from those of the other project and hence the amount of benefit of additional ITC to be passed on in respect of one project would not be similar to that of another project. Issuance of Occupancy Certificate/ Completion Certificate would also affect the amount of benefit of ITC as no such benefit would be available once the above certificates were issued. Therefore, no set of parameters could be fixed for determining the methodology to compute the benefit of additional ITC which would be required to be passed on to the buyers of such units.

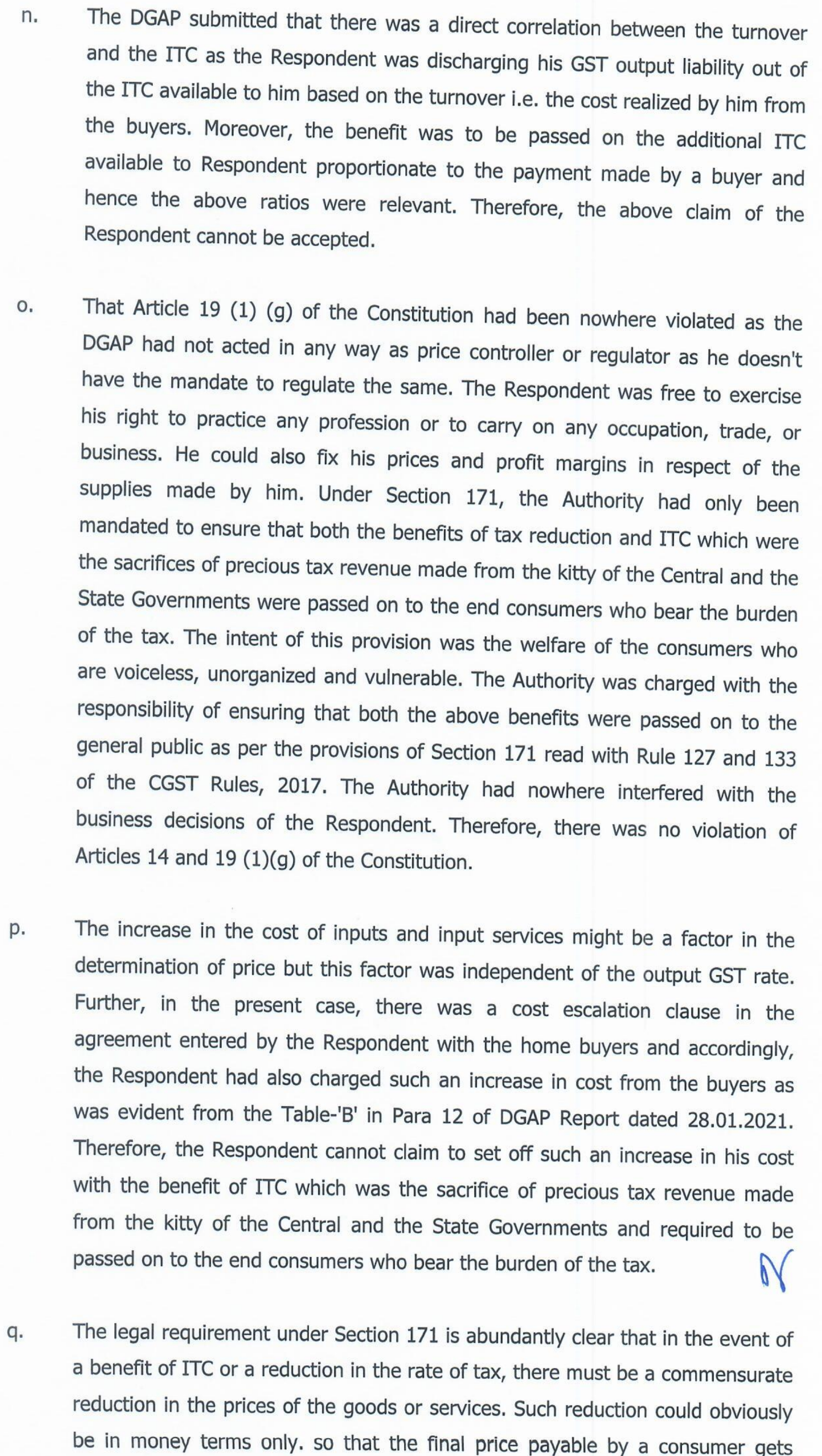
l. Further, the Parliament as well as all the State Legislature had delegated the task of framing the Rules under the CGST Act, 2017 to the Central Government as per the provisions of Section 164 of the above Act. Accordingly, the Central Government in terms of Section 171 (3) of the CGST Act, 2017 read with Section 2 (87) of the Act, had prescribed the powers and functions of the DGAP, on the recommendation of the GST Council, which was a Constitutional federal body created under the 101st Amendment of the Constitution, as per Rule 127 and 133 of the CGST Rules, 2017. Further, the power to determine his Methodology & Procedure had been delegated to the N.A.A.(hereinafter referred to as "Authority) under Rule 126 of the above Rules as per the provisions of Section 164 of the above Act as such power was generally and widely available to all the judicial, quasi-judicial and statutory authorities to carry out his functions and duties and hence no special favour had been shown to the Authority while granting such power. The Authority had only been allowed to determine the methodology and not to 'prescribe it' which it had to do keeping in view the facts of an individual case. Since the functions and powers to be exercised by the N.A.A. had been approved by competent bodies, the same was legal and binding on the Respondent.

m. That profiteering was not a tax as had been interpreted by the Respondent but it was a benefit that had accrued to him on account of additional ITC which he needed to pass on to the eligible customers. The CGST Act and the Rules provide for elaborate machinery in the form of NAA, DGAP, and the field tax authorities of the Central and the State Governments to enforce the anti-profiteering measures. Thus, the case law referred by the Respondent in the case of Commissioner, Central Excise and Customs v. Larsen & Toubro (2016) 1

SCC 170 does not hold good.

n. The DGAP submitted that there was a direct correlation between the turnover and the ITC as the Respondent was discharging his GST output liability out of the ITC available to him based on the turnover i.e. the cost realized by him from the buyers. Moreover, the benefit was to be passed on the additional ITC available to Respondent proportionate to the payment made by a buyer and hence the above ratios were relevant. Therefore, the above claim of the Respondent cannot be accepted.

o. That Article 19 (1) (g) of the Constitution had been nowhere violated as the DGAP had not acted in any way as price controller or regulator as he doesn't have the mandate to regulate the same. The Respondent was free to exercise his right to practice any profession or to carry on any occupation, trade, or business. He could also fix his prices and profit margins in respect of the supplies made by him. Under Section 171, the Authority had only been mandated to ensure that both the benefits of tax reduction and ITC which were the sacrifices of precious tax revenue made from the kitty of the Central and the State Governments were passed on to the end consumers who bear the burden of the tax. The intent of this provision was the welfare of the consumers who are voiceless, unorganized and vulnerable. The Authority was charged with the responsibility of ensuring that both the above benefits were passed on to the general public as per the provisions of Section 171 read with Rule 127 and 133 of the CGST Rules, 2017. The Authority had nowhere interfered with the business decisions of the Respondent. Therefore, there was no violation of Articles 14 and 19 (1)(g) of the Constitution.



p. The increase in the cost of inputs and input services might be a factor in the determination of price but this factor was independent of the output GST rate. Further, in the present case, there was a cost escalation clause in the agreement entered by the Respondent with the home buyers and accordingly, the Respondent had also charged such an increase in cost from the buyers as was evident from the Table-'B' in Para 12 of DGAP Report dated 28.01.2021. Therefore, the Respondent cannot claim to set off such an increase in his cost with the benefit of ITC which was the sacrifice of precious tax revenue made from the kitty of the Central and the State Governments and required to be passed on to the end consumers who bear the burden of the tax.

q. The legal requirement under Section 171 is abundantly clear that in the event of a benefit of ITC or a reduction in the rate of tax, there must be a commensurate reduction in the prices of the goods or services. Such reduction could obviously be in money terms only. so that the final price payable by a consumer gets

reduced. This was the legally prescribed mechanism for passing on the benefit of ITC or reduction in the rate of tax to the consumers under the GST regime. Moreover, it was also clear that the said Section 171 simply does not provide a supplier of any goods or services or any other means of passing on the benefit of ITC or reduction in the rate of tax to the consumers. Thus, the legal position was unambiguous and could be summed up as follows:

r. A supplier of goods or services must pass on the benefit of ITC or reduction in the rate of tax to the recipients by way of reducing the prices thereof paid by the recipients, and the law does not offer a supplier of goods and services and flexibility to suo-moto decide on any other modality to pass on the benefit of ITC or reduction in the rate of tax to the recipients. Therefore, in terms of Section 171 of the CGST Act, 2017, the claim made by the Respondent of an increase in the cost of procurement of materials cannot be considered extraneous to the passing on of the benefit. The contention of the Respondent regarding the non-recovery of price escalation from the buyers was also frivolous, misleading, and hence denied.

5. Applicant No. 1 has filed his submissions dated 15.05.2021 against the submissions dated 15.03.2021 made by the Respondent and Supplementary Report dated 31.03.2021 of the DGAP. Applicant No. 1 has reiterated the findings of the DGAP given in his Investigation Report.

a. That he agreed with the replies submitted by the DGAP except for his replies mentioned below.

- The Respondent has charged the cost of escalation @ 12% of the Cost of Flat i.e. Rs. 5,10.720/- (including 12% GST) which was correctly reflected in TABLE-B/ Page 11 of the DGAP's Report. The Respondent had charged escalation as per contract/brochure issued before allotment of the flat. The recipients were not responsible for the delay of the project from 2013 to 2020. Moreover, there was no such contract provision to charge escalation beyond 2013. The Estimated Cost of the Project, which was submitted as Annexure - A to the submissions dated 15.03.2021, also provided for 5% contingency & 2% Revenue which was Rs. 4,04,54,851/- and such amount was also available to meet any cost increase in addition to interest earned of 90% of the cost of Flat which was taken as advance and not spent for the project. The contention of the Respondent to set off any additional cost was not correct and not acceptable.

- The provision of Section 171 was very clear and unambiguous. So the Respondent needed to pass on such benefit received from his suppliers of services and goods to the Allottee of Flat by way of reduction of the amounts of installments. The Respondent had already admitted and as per the Return submitted under GST Laws the ITC benefit instead of being utilized for the reduction of the Basic cost of Flat/cost of balance installment & escalation

charges had been utilized for discharging output GST liability that was collected from the Recipient/Allottee of Flat.

- The Revised Demand raised vide letter No. Projects/BBSR/2019-20 dated.13.01.2020, showed the total cost of Flat, Escalation Cost 12% of basic price. Covered Parking, also the interest charged for Covered Parking, etc. of Flat.

6. Copy of the above clarifications dated 31.03.2021 under Rule 133(2A) of the CGST Rules, 2017 filed by the DGAP were supplied to the Respondent for filing his rejoinder/submissions. The Respondent has filed his rejoinder/submissions dated 10.06.2021 vide which he has reiterated his earlier submissions and has inter-alia stated:-

a. That the DGAP had wrongly stated that the Respondent had misconstrued Para 13 of the Report dated 28 January 2021, where DGAP stated that the Respondent had not considered all non-creditable taxes embedded in the cost of the project such as Swachh Bharat Cess ("SBC") and Value Added Tax ("VAT"), which was now available in the GST regime.

b. That the Respondent had procured goods and services for execution of the project and he was fully eligible to claim credit of Service Tax paid on input services in the pre-GST regime. In the GST regime also, there was no restriction on availing ITC of GST paid on services used in the project. Therefore, in as much as credit of tax paid on services was concerned, the same remained available both in the pre-GST regime as well as the post-GST regime. Hence, there was no additional benefit of ITC as much as "services" was concerned.

c. That in as much as ITC on "goods" was concerned, under the pre-GST regime, same was embedded with non-creditable taxes such as SBC and VAT, whereas under the GST regime tax paid on goods was creditable and therefore, the only additional benefit of ITC accrued to the Respondent was in the form of ITC on goods and same had already been accepted and quantified by the Respondent and therefore not in dispute. Therefore, the submission of the DGAP that Respondent had not considered all non-creditable taxes embedded in the project was factually wrong.

d. That the DGAP wrongly stated that the mandate under Section 171 was to pass on the benefit of ITC and not only incremental ITC. It was submitted that if taxes were creditable in both pre-GST and GST regimes, they could not be termed as the benefit of ITC under the GST. The benefit of ITC would mean only incremental ITC, i.e. ITC which was not available in the pre-GST regime but was available in the GST. Hence Section 171 only mandate to pass incremental ITC and not gross ITC which a supplier was entitled to avail. Section 171 does not require to specify ITC of "goods" as in the pre-GST regime, many suppliers were not entitled to the credit of tax paid on services

and therefore, the provision must be interpreted based on the facts of each case. Therefore, the submission of the DGAP on the benefit of ITC vis-à-vis incremental ITC was legally erroneous.

e. That the DGAP wrongly stated that for computing the benefit of ITC, CENVAT/ITC availed during the pre-GST period had to be compared with ITC availed in the GST regime. The above assertion was bereft of any merit as it ignores the following factors:-

    i. Every developer recovers the cost of land in the initial installments. Thus, initial installments were for the cost of land plus goods and services whereas later installments were mostly for goods and services. Land was not subject to VAT, Service Tax or GST. Thus, the tax paid in the earlier phase would be much lesser than the tax paid in the later phase of the project.

    ii. In case of an increase in the rate of tax, the quantum of ITC would be greater. In the pre-GST regime, the rate of service tax on input service was 15% whereas under GST it had become 18% and therefore, suppliers were eligible for higher ITC. However, higher ITC does not mean higher benefit as the supplier was also paying higher taxes. Hence any additional ITC on this count was neutralized with incremental tax payment.

    iii. It ignores the difference between eligibility and the availment of credit. If any supplier had inadvertently missed taking tax credit in the pre-GST regime resulting in a lower quantum of ITC, he cannot be punished in the GST regime with profiteering. Similarly, who had taken higher tax credit, albeit ineligible credit, cannot be rewarded in the GST regime. A bare comparison of tax credits availed in pre-GST with ITC availed in the GST regime would result in awarding dishonest suppliers and penalizing honest suppliers who inadvertently missed taking eligible credit. It would also result in perpetuating loss as the suppliers have suffered a loss on account of their failure to take the eligible credit in past and were again subjected to pejorative anti-profiteering proceedings as the quantum of ITC in the GST regime would be higher.

f. That the DGAP wrongly stated that the comparison had to be made based on overall figures of ITC and turnover as tax Returns and ITC registers don't bifurcate ITC on account of goods and services. The Respondent submitted that during the investigation, the Respondent submitted his ITC register containing ITC details at item levels with HS codes. Further GSTR-1 contained HS code-wise inward supply. HS codes for goods and services were different, thus ITC could be easily bifurcated for goods and services based on available records or could be sought from the Respondent. The Respondent had supplied details of procurement of goods and services separately and

therefore, the DGAP assertion that no bifurcation was permissible on account of goods and services was not only factually erroneous but also illegal.

g. That any benefit of ITC that could arise to the Respondent could only be on account of ITC of GST paid on the purchase of goods in the post-GST regime. At the maximum, the benefit of ITC might also arise on account of Swachh Bharat Cess (SBC), which was non-creditable. In respect of goods, the Respondent had availed ITC of Rs. 13,49,003/- on the goods which were not available in the erstwhile VAT regime. In as much as SBC was concerned, the quantum of ITC on such account could be computed as under:-

Particulars	Amount in Rs.
ITC on services availed in GST regime (18%)	2,06,73,381
Value of services (recalibrated)	11,48,52,117
Benefit on account of SBC (0.5% of value of services)	5,74,260

h. That the DGAP had erred in interpreting his submission on power sub-station by stating that the Respondent had declared that ITC availed on goods portion (in GST regime) was ₹ 13,49,003/- whereas ITC amounting to ₹ 40,25,472/- was availed on Power Sub-station work itself. It was submitted that Power Sub-station work was built by the contractor as works contract service and therefore was included in the service and not goods.

i. That the Respondent had not charged any escalation cost after 2013. The amount of Rs. 4,38,000/- was the escalation cost up to 2013 and no escalation was charged thereafter.

j. Under Rule 126 of the CGST Rules, there was a sub-delegation that was impermissible in law, unless the parent statute provides for the power of sub-delegation. The Respondent has placed reliance on the judgment of the Hon'ble Supreme Court in ***Barium Chemicals Ltd. & Ors. v Respondent Law Board & Ors. [AIR 1967 SC 295]*** in this regard.

k. That, while admitting that cost of inputs and input services might be a factor for determination of price, wrongly stated that same was independent of output GST. GST was charged ad valorem and therefore dependent on price and price was dependent on the cost. Thus, the denial of cost adjustment in price was nothing but violative of Article 19(1)(g) of the Constitution. In as much as cost escalation was concerned, the same had been clarified in para 4.10 above that he had not charged any escalation cost after 2013.

7. The DGAP has also filed his clarifications dated 12.07.2021 on the submissions dated 15.05.2021 filed by Applicant No. 1 and had clarified that the replies of the Applicant No. 1 in these paras were aligned with DGAP's clarification submitted vide letter of even no. dated 31.03.2021. In the present case, there was a cost escalation clause in the agreement entered by the Respondent with the home buyers and accordingly, the Respondent had also charged such an increase in cost from the buyers as was evident from Table-'B' in Para 12 of the DGAP's Report dated 28.01.2021. Therefore, the Respondent could not claim to set off such an increase in his cost with the benefit of ITC which was the sacrifice of tax revenue made from the coffers of the Central and the State Governments and required to be passed on to the end consumers who bear the burden of the tax.

8. Personal hearing was also granted to the Respondent and Applicant No. 1 by way of video conferencing on 13.04.2022. Sh. Dinesh Agarwal and Sh. Pranay Sahay appeared on behalf of the Respondent and they reiterated the written submissions made earlier to this Authority and inter-alia stated that they were ready to pass on the benefit of ITC amounting to Rs. 1.39 Crores to their customers/home buyers. Applicant No. 1 also appeared for the hearing and reiterated his written submissions made earlier before this Authority.

9. This Authority has carefully considered all the submissions filed by the Applicants, the Respondent, and the other material placed on record and has observed that Applicant No. 1 had alleged that the Respondent was not passing on the benefit of ITC to him on purchase of the flat, which he had purchased in the "Jeevan Ananda" Project being executed by the Respondent in Bhubaneswar Tehsil, Khurda District, even though he was availing ITC on the purchase of the inputs at the higher rates of GST which had resulted in the benefit of additional ITC to him and was also charging GST from him @12%. This complaint was examined by the Standing Committee and forwarded to the DGAP for investigation under Rule 129 (1) of the above Rules. The DGAP vide his Report dated 28.01.2021 had found that the Respondent had profiteered an amount of Rs. 1,85,70,263/- by not passing on the ITC benefit to his buyers.

10. On examining the various submissions we find 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 that has to be passed on to the recipients?

11. One of the main contentions of the Respondent in the present case is that he was eligible to take CENVAT credit of the Service Tax paid on the input services in the pre-GST regime and he remained eligible to take ITC of the GST paid on the input services, therefore, there was no benefit of ITC as much as "services" were concerned. In respect of the above contention of the Respondent, it is relevant to mention here that Section 171 (1) of the CGST Act, 2017 provides that "*Any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices.*" It is clear from the plain reading of the above provision that it mentions **"reduction in the rate of tax or benefit of**

ITC" which means that if any reduction in the rate of tax is effected by the Central or the State Governments or if a registered supplier avails the benefit of additional ITC, the same has to be passed on by him to his recipients since both the above benefits are being given by the above Governments out of their tax revenue. Although there has been no reduction in the rate of tax in the case of Construction Service, however, several taxes and duties which were being levied under the State Acts have been subsumed in the GST under the CGST and State GST Act, 2017 on which ITC is now available to the Respondent. Accordingly, the Respondent has become entitled to ITC as Central Excise Duty, Sales Tax, and Entry Tax which was not available to him in the pre-GST regime, which has been termed a benefit of ITC and is required to be passed on as per Section 171 by Respondent. The above provision nowhere stipulates that the above benefit was to be passed on only on the ITC which was availed on account of the purchase of goods. As per the CGST Act, no bifurcation of the ITC was permissible on account of the goods and services purchased nor were separate records of the same required to be maintained. The Respondent is laboring under the wrong impression that he was paying the Service Tax during the pre-GST period and under the GST period from his pocket which is completely frivolous as he is getting 100% ITC during both the periods. Therefore any additional ITC which he is getting in the GST period has to be passed on. Hence, the above claim of the Respondent is not correct and cannot be accepted.

12. The Respondent has further contended that the methodology adopted by the DGAP in his Report was incorrect in as much as it considered the percentage of ITC "availed" by the Respondent in the pre-GST and post-GST regime as a percentage of total turnover. It was submitted that as opposed to determining the benefit of ITC considering credit "availed", the DGAP should actually determine the benefit of ITC by considering ITC "available" to determine the benefit of ITC and the quantum of profiteering. Concerning the above contention of the Respondent, the Authority finds that the methodology adopted by the DGAP for the calculation of the additional benefit of ITC accrued to the Respondent on the introduction of GST is correct and as per the provisions of Section 171 of the Act. The benefit of additional ITC would depend on the comparison of the ITC/CENVAT which was availed by the Respondent in the pre-GST period with the ITC availed by him in the post-GST period w.e.f. 01.07.2017. Without comparing the pre and post-GST ratio of CENVAT/ITC to turnover, the exact quantum of profiteering amount cannot be determined. Hence, to arrive at the benefit of additional ITC, the comparison of availed ITC is within the scope of Section 171 of the Act. The contention of the Respondent appears to be illogical as he cannot pass on the ITC which is only "available" and not "availed".

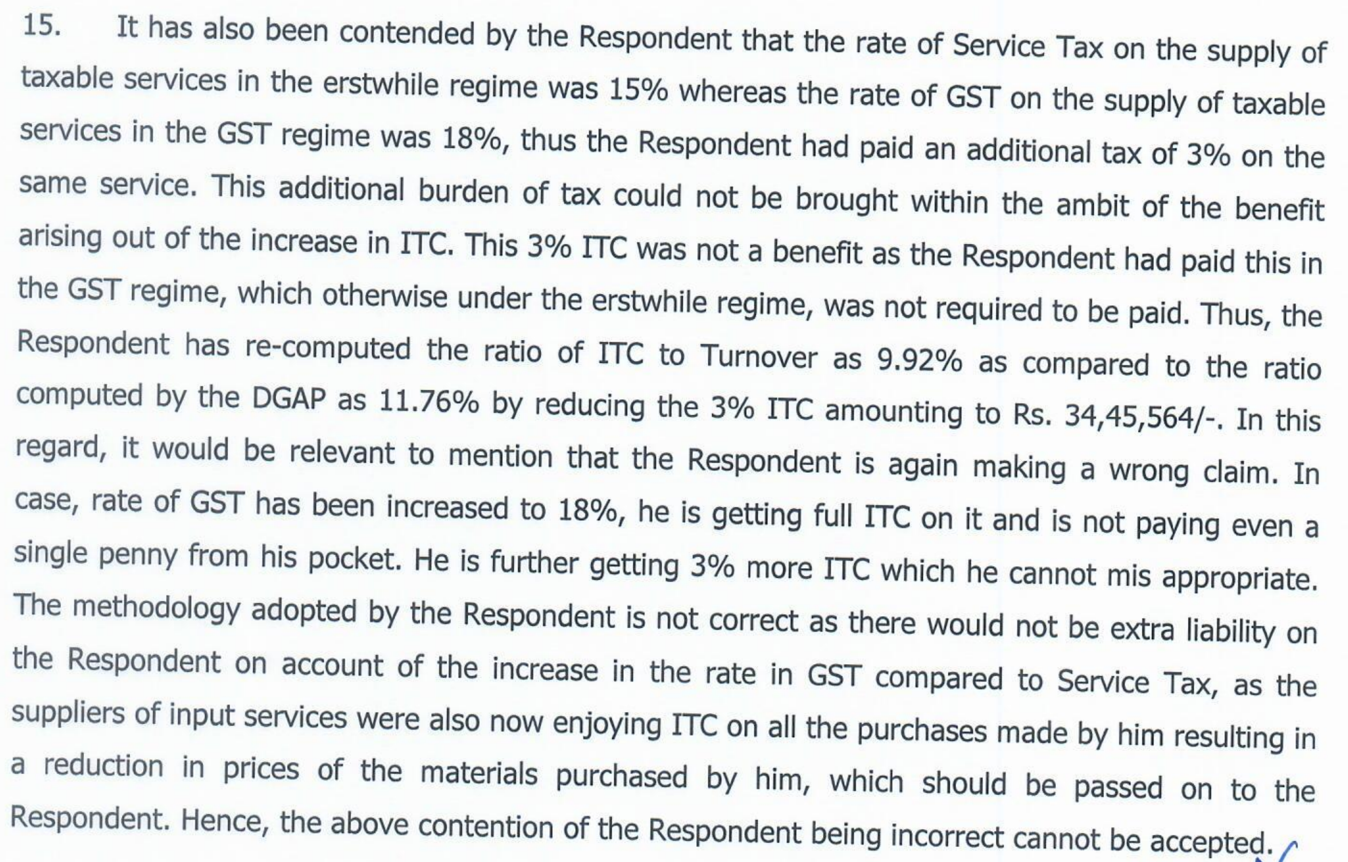
13. The Respondent has argued that in the absence of a prescribed method of calculation of profiteering in the Act or the Rules or the Procedure and Methodology, the proceedings are arbitrary and liable to be set aside and no action might be taken under Section 171 of the CGST Act read with Rule 126 of the CGST Rules till the mechanism or guidelines were framed for determining the benefit accrued to a consumer on the benefit of ITC. In the absence of the same, there was a lack of transparency and the results could vary from case to case. He has further contended that there was no definition of "profiteering" provided for under the CGST Act. To support his claim, the Respondent has relied upon the case of ***Commissioner, Central Excise and Customs, Kerala***

versus Larsen and Toubro Limited (2016) 1 SCC 170. The Authority finds that, the above contention of the Respondent is without substance as the 'Procedure and Methodology' for passing on the benefits of reduction in the rate of tax and ITC or for computation of the profiteered amount has been outlined in Section 171 (1) of the CGST Act, 2017 itself which provides that *"any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices."* The Authority finds that, it is clear from the plain reading of the above provision that it mentions "reduction in the rate of tax or benefit of ITC" which means that if any reduction in the rate of tax is ordered by the Central and the State Governments or a registered supplier avails benefit of additional ITC post-GST implementation, the same has to be passed on by him to his recipients since both the above benefits are being given by the above Governments out of their scarce and precious tax revenue. It also provides that the above benefits are to be passed on any supply i.e. on each product or unit of construction or service to every buyer and in case they are not passed on, the quantum of denial of these benefits or the profiteered amount has to be computed for which investigation has to be conducted in respect of all such products/units/services by the DGAP. What would be the 'profiteered amount' is clearly defined in the explanation attached to Section 171. These benefits cannot be passed on at the entity/organization/branch/ invoice/ business vertical level as they have to be passed on to each buyer at each product/unit/service level by treating them equally. The above provision also mentions "any supply" which connotes each taxable supply made to each recipient thereby making it evident that a supplier cannot claim that he has passed on more benefit to one customer on a particular product therefore he would pass less benefit or no benefit to another customer than what is actually due to that customer, on another product. Each customer is entitled to receive the benefit of tax reduction or ITC on each product or unit or service purchased by him subject to his eligibility. The term "commensurate" mentioned in the above Sub-Section provides the extent of benefit to be passed on by way of reduction in the price which has to be computed in respect of each product or unit or service based on the price and the rate of tax reduction or the additional ITC which has become available to a registered person. The legislature has deliberately not used the word 'equal' or 'equivalent' in this Section and used the word 'Commensurate' as it had no intention that it should be used to denote proportionality and adequacy. The benefit of additional ITC would depend on the comparison of the ITC/CENVAT credit which was available to a builder in the pre-GST period with the ITC available to him in the post-GST period w.e.f. 01.07.2017. Similarly, the benefit of tax reduction would depend upon the pre-rate reduction price of the product and the quantum of reduction in the rate of tax from the date of its notification. Computation of commensurate reduction in prices is purely a mathematical exercise which is based upon the above parameters and hence it would vary from product to product or unit to unit or service to service and hence no fixed mathematical methodology can be prescribed to determine the amount of benefit which a supplier is required to pass on to a buyer. Similarly, computation of the profiteered amount is also a mathematical exercise that can be done by any person who has elementary knowledge of accounts and mathematics as per the Explanation attached to Section 171. However, to further explain the legislative intent behind the above provision, this Authority has been authorized to determine the 'Procedure and Methodology' which has been done by it vide its Notification dated 28.03.2018 under Rule 126 of the CGST Rules, 2017. However, no fixed mathematical formula, in respect of all the

Sectors or the products or the services, can be set for passing on the above benefits or for computation of the profiteered amount, as the facts of each case are different. In the case of one real estate project, date of start and completion of the project, price of the flat/shop, mode of payment of price or installments, stage of completion of the project, rates of taxes pre and post GST implementation, amount of CENVAT credit and ITC available, total saleable area, area sold and the taxable turnover received before and after the GST implementation would always be different from the other project and hence the amount of benefit of additional ITC to be passed on in respect of one project would not be similar to the other project. Therefore, no set procedure or mathematical methodology can be framed for determining the benefit of additional ITC which has to be passed on to the buyers of the units. Moreover, this Authority under Rule 126 has been empowered to 'determine' Methodology & Procedure and not to 'prescribe' it. Similarly, the facts of the cases relating to the sectors of Fast Moving Consumer Goods (FMCG), restaurant service, construction service, and cinema service are completely different from each other and therefore, the mathematical methodology adopted in the case of one sector cannot be applied to the other sector. Moreover, both the above benefits are being given by the Central as well as the State Governments as a special concession out of their tax revenue in the public interest and hence the suppliers are not required to pay even a single penny from their own pocket and therefore, they are bound to pass on the above benefits as per the provisions of Section 171 (1) which are abundantly clear, unambiguous, mandatory and legally enforceable. The above provisions also reflect that the true intent behind the above provisions, made by the Central and the State legislatures in their respective GST Acts, is to pass on the above benefits to the common buyers who bear the burden of tax and who are unorganized, voiceless, and vulnerable. It is abundantly clear from the above narration of the facts and the law that no elaborate mathematical calculations are required to be prescribed separately for passing on the benefit of ITC and computation of the profiteered amount. This Authority is under no obligation to provide the same to the Respondent. The Respondent cannot deny the benefit of ITC to his customers on the above ground and enrich himself at the expense of his buyers as Section 171 provides a clear-cut methodology and procedure to compute the benefit of tax reduction and the profiteered amount. Therefore, the Authority finds that the above plea of the Respondent cannot be accepted. Further, concerning the case i.e. ***Commissioner, Central Excise and Customs, Kerala versus Larsen and Toubro Limited (2016) 1 SCC 170,*** it is mentioned that the methodology for calculation of benefit of additional ITC has been duly provided under Section 171 of the Act. Hence, the law settled in the cases relied upon by the Respondent is not applicable in the present case.

14. The Respondent has also averred that he had availed ITC of Rs. 13,49,003/- on the goods which were not available in the erstwhile VAT regime, and therefore the benefit of additional ITC arising out of an increase in ITC to the Respondent, which needed to be passed on to the homebuyer was Rs. 13,49,003/- and he is in the process of issuing suitable credit notes to the homebuyers. About the above contention, it would be pertinent to mention that the benefit of additional ITC that has accrued to the Respondent on the introduction of GST would depend on the comparison of the ITC/CENVAT which was availed to the Respondent in the pre-GST period with the ITC availed by him in the post GST period w.e.f. 01.07.2017. Without comparing the pre and post-

GST ratio of CENVAT/ITC to turnover, the exact quantum of profiteering amount cannot be determined. As per the details mentioned in Table-C, it is clear that he has not availed ITC/CENVAT during the pre-GST period whereas he has availed Rs. 2,20,20,794/- as ITC during the post-GST period. Moreover, as per Annexure-D enclosed by the Respondent himself with his submissions dated 15.03.2021, it is noticed that the ITC amounting to Rs. 40,25,472/- was availed by the Respondent on the Power Sub Station Works itself. Hence, the above amount has to be passed on by the Respondent. Therefore, contention made by the Respondent is not tenable and cannot be accepted.



15. It has also been contended by the Respondent that the rate of Service Tax on the supply of taxable services in the erstwhile regime was 15% whereas the rate of GST on the supply of taxable services in the GST regime was 18%, thus the Respondent had paid an additional tax of 3% on the same service. This additional burden of tax could not be brought within the ambit of the benefit arising out of the increase in ITC. This 3% ITC was not a benefit as the Respondent had paid this in the GST regime, which otherwise under the erstwhile regime, was not required to be paid. Thus, the Respondent has re-computed the ratio of ITC to Turnover as 9.92% as compared to the ratio computed by the DGAP as 11.76% by reducing the 3% ITC amounting to Rs. 34,45,564/-. In this regard, it would be relevant to mention that the Respondent is again making a wrong claim. In case, rate of GST has been increased to 18%, he is getting full ITC on it and is not paying even a single penny from his pocket. He is further getting 3% more ITC which he cannot mis appropriate. The methodology adopted by the Respondent is not correct as there would not be extra liability on the Respondent on account of the increase in the rate in GST compared to Service Tax, as the suppliers of input services were also now enjoying ITC on all the purchases made by him resulting in a reduction in prices of the materials purchased by him, which should be passed on to the Respondent. Hence, the above contention of the Respondent being incorrect cannot be accepted.

16. The Respondent has further contended that the period between April 2016 to June 2017 considered for computing the percentage of benefit arising out of ITC was without any basis and arbitrary. About the above contention of the Respondent, this Authority finds that the law does not provide for any specific period of investigation and that to arrive at an appropriate assessment of the percentage of ITC availed by the Respondent just before the GST, an adequate period needs to be considered. During the period considered for computation of benefit there was no variation in the rate of tax on services and before that, there were several changes in the rate of Service Tax as well as changes in the conditions for eligibility of availing of CENVAT Credit of Service Tax and Excise Duty including the rate of abatement, etc. which could have resulted in a distorted picture of CENVAT. Thus, the aforesaid period was taken to calculate the average ratio of ITC availed with turnover. The ratio of ITC and turnover in the Pre-GST period was compared with the ratio of ITC in the post-GST period. The period during the GST period might be one month or one year, depending upon the period of investigation. It does not mean that if the period was larger than the availment of ITC would increase or decrease but it only gives a ratio that represents the period for comparison. It was a standard practice to take the pre-GST period from 01.04.2016 to 30.06.2017 and had been followed in all cases.

17. The Respondent has further contended that he has incurred costs on setting up and installation of Power Sub-Station in the project and thus he has not charged any amount towards the escalation of price since 2013. Concerning the above contention of the Respondent, it is observed that the Schedule of Payment submitted by the Respondent to the DGAP has been mentioned by the DGAP in Table-B at Para 12 of the DGAP's Report dated 28.01.2021. Upon perusal of Table B mentioned above, it is observed that the Respondent has charged Escalation Cost from Applicant No. 1 and an amount of Rs. 5,10,720/- including GST has been appropriated from Applicant No. 1 towards the Escalation Charges by the Respondent. Further, Applicant No. 1 vide his submissions 15.05.2021 has stated that the Respondent has charged 12% of the cost of the Flat as Escalation Charges which was paid by him in June 2020. Hence, the above contention made by the Respondent being incorrect cannot be accepted.

18. The Respondent has further contended that one of the apparent flaws in this mechanism was that the ratio of ITC was based on the quantum of turnover during the said period. He has further illustrated that if the last installment (which was due in the GST regime) was increased to 50% (from the existing 10%) the ratio of ITC to turnover would severely get affected and the profiteering might also be determined as a negative figure (mathematically). In such a situation, while the DGAP might state that there was no profiteering by the Respondent, the fact would remain that the Respondent had started availing certain credits due to the introduction of GST which were not available in the erstwhile period, and therefore, the benefit of ITC does exist. In this regard, it would be relevant to mention that the above contention of the Respondent is hypothetical and is based on his assumptions as the number and amount of installments is always fixed in the beginning of the project. The mathematical calculation of additional benefit of ITC is a practice based on the actual figures of the CENVAT/ITC and turnover taken from the Statutory Returns and the data supplied by the Respondent. Hence, the above contention made by the Respondent is based on assumption and cannot be accepted.

19. The Respondent has further argued that while determining the amount of profiteering under section 171 of the CGST Act, direct or indirect increase in cost of production and/or cost of supply must also be considered to protect the fundamental right to carry business as enshrined under Article 19(1)(g) of the Constitution of India. Ignoring the increased cost of production and/or cost of supply would compel the Respondent to suffer loss and thereby, infringe the fundamental rights guaranteed under Article 19(1)(g). In this connection, it would be correct to point out that there is no question of increase in cost as the Respondent has already build the escalation in his prices. Neither the DGAP nor this Authority has acted in any way as a price controller or regulator as it doesn't have the mandate to regulate the same. The Respondent is absolutely free to exercise his right to practice any profession or to carry on any occupation, trade, or business, as per the provisions of Article 19 (1) (g) of the Constitution. He can also fix his prices and profit margins in respect of the supplies made by him. Under Section 171 this Authority has only been mandated to ensure that both the benefits of tax reduction and ITC, which are the sacrifices of precious tax

revenue made from the kitty of the Central and the State Governments are passed on to the end consumers who bear the burden of the tax. The intent of this provision is the welfare of consumers who are voiceless, unorganized, and vulnerable. This Authority is charged with the responsibility of ensuring that both the above benefits are passed on to the general public as per the provisions of Section 171 read with Rule 127 and 133 of the CGST Rules, 2017. Hence, the anti-profiteering related Rules and Section 171 of the Act have the express approval of the Parliament, all the State Legislatures, the Central and all the State Governments, and the GST Council, therefore, Section 171 and the Rules are constitutional and are not violative of Article 19 (1) (g) of the Constitution. This Authority has nowhere interfered with the business decisions of the Respondent and therefore, there is no violation of Article 19 (1) (g) of the Constitution.

20. Further, concerning the consideration of increased cost of production and/or cost of supply, we observe that the Respondent is charging Escalation Charges from his home buyers and the same is evident from the Schedule of Payment submitted by the Respondent to the DGAP which is provided in Table-B at Para 12 of the DGAP's Report dated 28.01.2021. Further, Applicant No. 1 vide his submissions 15.05.2021 has also confirmed that the Respondent has charged 12% of the cost of the Flat as Escalation Charges which was paid by him in June 2020. Hence, to appropriate his increased Cost of Production and/or Cost of Supply, the Respondent has charged Escalation Charges from his home buyers. Hence, the above contention made by the Respondent is not correct and cannot be accepted. Therefore, the case cited by the Respondent in his support does not help him.

21. The Respondent has also argued that he had not charged the Escalation Cost from his homebuyers in respect of his projects since 2013. Hence he has passed on the benefit of additional ITC to his homebuyers by not charging the Escalation Charges from them. In this regard, this Authority finds that the above contention of the Respondent is not true. The Respondent has charged the Escalation Cost from his customers and the same is evident from the Report of the DGAP and the submissions dated 15.05.2021 of Applicant No. 1. The demand letter dated 13.01.2020 issued by the Respondent to the Applicant No. 1 demanding Escalation Cost contradicts the submissions of Respondent that the no Escalation Cost has been demanded after 2013. Hence, the contention of the Respondent being incorrect cannot be accepted.

22. It is clear from a plain reading of Section 171 (1) cited 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 about 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 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 September-2020), it was 11.76% for the Project 'Jeevan Ananda'. This confirms that post-GST, the Respondent has benefited from additional ITC to the tune of 11.76% (11.76% - 0%) of his turnover, and the same was required to be passed on to the customers/flat buyers/recipients. The DGAP has calculated the amount of ITC

benefit availed by the Respondent which needs to be passed on to all the recipients of supply including the Applicant No. 1 as Rs. 1,85,70,263/-. The details of such calculations are mentioned in Table- D supra.

23. Given the above discussions, the Authority finds that the Respondent has profiteered by an amount of Rs. 1,85,70,263/- during the period of investigation i.e. 01.07.2017 to 30.09.2020. This amount of Rs. 1,85,70,263/- includes the amount relating to the Applicant No. 1 amounting to Rs. 1,27,892/-. The above amount that has been profiteered by the Respondent from the recipients of supply in the 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 refund payment and per the provisions of Rule 133 (3) (b) of the GCST Rules 2017.

24. 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 30.09.2020, in the instant case, as Rs. 1,85,70,263/-. 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.

25. The Respondent is also liable to pay interest as applicable on the entire amount profiteered, i.e. Rs. 1,85,70,263/-. 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 by way of refund payment, as per provisions of Rule 133 (3) (b) of the CGST Rules 2017.

26. The details of the amount of benefit of ITC to be passed on by way of refund along with interest @18% to the recipients of supply i.e. homebuyers is as below:-

(Amount in Rs.)

S.No.	Name of Consumer	Unit No.	Profiteering Amount to be passed on
1	SIBA PRASAD MOHARANA & KALYANI MOHARANA	A-1-101	110111
2	GOURANGA CHARAN DASH & OM SHANKAR	A-1-102	105765
3	VIKASH KUMAR GANATRA & SHANTI GOURI THAKKER	A-1-103	92725
4	RAJENDRA KUMAR JENA & SANJUKTA JENA	A-1-104	88379
5	SUSHIL CH SAHU & Dr SUNITA SAHU	A-1-105	110111
6	AYAN OMER & REKHA DAS	A-1-106	*
7	MAHESH BACHAN ROUT	A-1-201	105765
8	BANANTA PADMANABHA SUBUDHI	A-1-202	*
9	SURENDRA NATH JENA	A-1-203	88379
10	BIDYUT PRAKASH RAY & ABHIJEET ROY	A-1-204	*
11	BANITA RATH & BIMAL CHANDRA RATH	A-1-205	105765
12	SRADHANANDA MOHAPATRA& ANUPAMA MOHAPATRA	A-1-206	110111
13	GANESWAR MISHRA & SANDEEP MISHRA	A-1-301	110111
14	PARTHA SARATHI JENA & KRUSHNA CH.JENA	A-1-302	*

15	JITENDRA NATH PATRA & RANITA PATRA	A-1-303	92725
16	BIJOY KUMAR MOHARANA	A-1-304	88379
17	CHITTA RANJAN ASHE	A-1-305	110111
18	GOPINATH MISHRA	A-1-306	105765
19	HEMANTA KUMAR SAHU	A-1-401	127892
20	MINATI PANI	A-1-402	110111
21	SOVARANI ACHARYA & SUVRATA ACHARYA	A-1-403	88379
22	SEIKH NURUDDIN	A-1-404	*
23	RAM NARAYAN ACHARYA & MADHUMITA ACHARYA	A-1-405	105765
24	GAYATRI PANDA & MANJUSHREE PANDA	A-1-406	*
25	AJAY CHANDRA TRIPATHY & BIJOY CHANDRA TRIPATHY	A-1-501	110111
26	JADU BANSH GUPTA & PREM SHANKAR GUPTA	A-1-502	*
27	MANAS RANJAN BISWAL & MAGUNI CHARAN BISWAL	A-1-503	92725
28	SURJIT DASH & BAIKUNTHA NATH DASH	A-1-504	*
29	AKSHYA KUMAR PARHI & SASMITA PARHI	A-1-505	110111
30	SURENDRA NAYAK	A-1-506	105765
31	SADASIV MISHRA	A-1-601	105765
32	DR SUSAMA MOHANTY & PRASANTA KUMAR PRADHAN	A-1-602	*
33	JAGADISH CHANDRA PAUL & KISHORE CH.PAUL	A-1-603	88379
34	PRATIMA PRADHAN & RAGHU NANDAN BADHAI	A-1-604	92725
35	ASHOK KUMAR PRADHAN	A-1-605	*
36	ASHOK KUMAR PANDA & SUKANTI DEVI	A-1-606	110111
37	MANORAMA LENKA & RABI NARAYAN LENKA	A-1-701	110111
38	ASHIM KUMAR CHAKRABORTY & ALAKANANDA CHAKRABORTY	A-1-702	105765
39	MIRZA FEROZ ALI BAIG &MIRAZ ARSHAD ALAM BAIG	A-1-703	92725
40	HARIHAR ROUT & MALATI ROUT	A-1-704	110506
41	RAJESH RAM MISHRA & SUJATA MISHRA	A-1-705	110111
42	PRATIMA PANDA & CHANDRADHWAJ PANDA	A-1-706	105765
43	JAYANTI DAS & AMBIKA PRASANNA DAS	A-1-801	105765
44	RAJ KISHORE PATRA	A-1-802	110111
45	JEEBAN DAS & JADUNATH DAS	A-1-803	110506
46	RAM SHANKAR NANDA	A-1-804	92725
47	CHANDRADHWAJ PANDA & PRATIMA PANDA	A-1-805	105765
48	PRANATI TRIPATHY & ARUNAVA TRIPATHI	A-1-806	110111
49	MAYADHAR JENA & CHIDANANDA JENA	A-1-901	*
50	DEBABRATA DASH & UMESHWAR DASH	A-1-902	127892
51	ANASUYA DEVI & SRINIVAS PANIGRAHY	A-1-903	*
52	JEEVAN JYOTI RAY & DEVI PRASAD RAY	A-1-904	*
53	DR SUCHARITA MOHANTY & BINODINI MOHANTY	A-1-905	110111
54	SAILENDRA KUMAR MISHRA & KUSUM MISHRA	A-1-906	105765
55	HARISH CHANDRA SAMAL & SMRUTI TIRTHA SAMAL	A-2-101	110111
56	SHYAM GHAN PRADHAN & SHREEMATI PRADHAN	A-2-102	*
57	SIBA SEKHAR RATH & NIRUPAMA RATH	A-2-103	75264
58	SANJAY KESHARI SWAIN	A-2-104	88379
59	RANJAN KUMAR MOHAPATRA	A-2-105	110111
60	DEBA SHANKAR PATNAIK & MADHU CHHANDA PATNAIK	A-2-106	105765
61	BRAMHANANDA PANDA & GEETA BACHASPATI	A-2-201	*
62	RUDRA PRAKASH PRADHAN & SULOCHANA PRADHAN	A-2-202	110111

63	KRUSHNA MOHAN PATNAIK & PADMINI PATNAIK	A-2-203	88379
64	PRABHAT KUMAR MISHRA	A-2-204	*
65	PRIYA RANJAN BEHERA & GAGAN BIHARI BEHERA	A-2-205	105765
66	SUKANTIBALA MOHAPATRA	A-2-206	110111
67	TAPAN KUMAR MOHANTY	A-2-301	110111
68	PRAMILA PARIDA & PRADIP KU PARIDA	A-2-302	*
69	SURENDRA NATH PATRA	A-2-303	92725
70	BIJAY KUMAR DASH & PARBATI DASH	A-2-304	*
71	KASHINATH RATH & BHARATI RATH	A-2-305	110111
72	MOHINI MISHRA & SOUMITRI KUMAR MISHRA	A-2-306	*
73	ABHAYA KUMAR RAY	A-2-401	105765
74	BHAGIRATHI BARIK	A-2-402	110111
75	ABHAYA SHANKAR MISHRA & HEMA LATA MISHRA	A-2-403	88379
76	DR.RANJITA BISWAL & DR.KABINDRA PRASAD SAHOO	A-2-404	92725
77	SUJATA PRIYADARSHINI SAHOO & JITENDRA KUMAR SAHOO	A-2-405	105765
78	BIMAL KISHORE DASH	A-2-406	110111
79	ASHOK KUMAR DAS & ASHALATA DAS	A-2-501	110111
80	UMA BEHERA & MINATI SAHU	A-2-502	105765
81	S.SUDHAKAR RAO & S.SAILAJA	A-2-503	92725
82	LALATENDU JENA & BHAGABAN JENA	A-2-504	110506
83	BALMUKUNDA DAS & SNEHA MANJARI MOHANTY	A-2-505	110111
84	SUCHETA PANI & HEMANTA KUMARI DEVI	A-2-506	105765
85	BIJAYA KUMAR BEHERA & SURESH CHANDRA BEHERA	A-2-601	*
86	ASHOK JENA SAMANTA & ANURADHA JENASAMANTA	A-2-602	110111
87	RAM GOPAL JAISWAL & SRICHAND JAISWAL	A-2-603	88379
88	PUSPA GOEL & SUDHIR KUMAR GOEL	A-2-604	92725
89	PURNA CHANDRA DAS & SUBRATA DAS	A-2-605	105765
90	NAMITA MISHRA & PRADIP KUMAR MISHRA	A-2-606	110111
91	AAKASH SHARMA & BIMAL PRASAD SHARMA	A-2-701	*
92	MAMITA DAS & KALPANA DAS	A-2-702	105765
93	PURNA CHANDRA MISHRA SAKUNTALA MISHRA	A-2-703	92725
94	BIRENDRA KUMAR MISHRA & ABHIJIT MISHRA	A-2-704	88379
95	RAJENDRA PRASAD ACHARYA	A-2-705	*
96	NITISH MISHRA & B.N.MISHRA	A-2-706	*
97	ANIL KUMAR BISOYI & GITA RANI BISOYI	A-2-801	105765
98	SUBHRANSHU SEKHAR NANDA & PANKAJ LOCHAN NANDA	A-2-802	110111
99	HIMANSHU SEKHAR MISHRA & PLABANI MISHRA	A-2-803	88379
100	RABI SHANKAR MISHRA	A-2-804	92725
101	DR SANJAY KISHORE DAS & SULOCHANA DAS	A-2-805	*
102	DR.JAYASHREE PATTNAIK	A-2-806	110111
103	SRIRAM HOTA & RITA HOTA	A-2-901	*
104	DR.SASMITA PARIDA & DR.H.P.PATTNAIK	A-2-902	127892
105	PRASANTA KUMAR DAS & NRUSINGH CH.DAS	A-2-903	92725
106	LELIN DAS & NIRMALA KUMARI DEI	A-2-904	*
107	GOUTAM DAS & BILASINI DAS	A-2-905	110111
108	KISHOR KUMAR HOTA & LOPITA MISHRA	A-2-906	127892
109	K DILLIRAO ACHARI	A-3-101	*
110	NARESH CHANDRA SAHOO	A-3-102	105765
111	JADUMANI MOHARANA & PRAMILA MOHARANA	A-3-103	92725
112	PUSPA ACHARYA	A-3-104	88379

113	AJIT GOPAL SAMAL	A-3-105	*
114	PURNA CHANDRA NAYAK & PRASANTA SHEKHAR NAYAK	A-3-106	105765
115	DEBADUTTA MOHANTY & ASHOK KUMAR MOHANTY	A-3-201	105765
116	DUKHI SHYAM PANDA & SIMANCHAL PANDA	A-3-202	110111
117	PRANATI NAYAK & SARAT KUMARI NAYAK	A-3-203	88379
118	AMARENDRA KUMAR DAS & BISWANATH DAS	A-3-204	92725
119	GEETA RANASINHA	A-3-205	105765
120	SARAT KUMAR PANDA & DIPAK KU PANDA	A-3-206	110111
121	JUSTICE BASUDEB PANIGRAHI & BINDHYABALA PANIGRAHI	A-3-301	*
122	PADMASREE CHATTOPADHAYA	A-3-302	105765
123	PRIYANATH PATRA & SHIB NARAYAN PATRA	A-3-303	92725
124	TARA CHARAN MOHAPATRA & SUBHASIS MOHAPATRA	A-3-304	110506
125	RABINDRA KUMAR MISHRA & SANDHYA RANI SUPKAR	A-3-305	*
126	ASHIS GOENKA & SHARDA GOENKA	A-3-306	*
127	DILIP KUMAR BHUYAN & BIDYADHAR BHUYAN	A-3-401	*
128	SUSHIL KU MISHRA & KAILASH CH MISHRA	A-3-402	110111
129	TUSHAR RANJAN MOHANTY	A-3-403	*
130	ANANTA SARAN PARIDA	A-3-404	92725
131	UMAKANTA SAHOO & JATINDRA MOHAN SAHOO	A-3-405	105765
132	JAMESWAR MOHANTY & SABITA MOHANTY	A-3-406	*
133	NIRUPAMA KHUNTIA & PRADIP KU KHUNTIA	A-3-501	100101
134	PHULWA DEVI & DILIP KU SATAPATHY	A-3-502	*
135	USHA KIRAN SAMANTARAY	A-3-503	*
136	RAMBHA SAHU & DAMBARUDHAR SAHU	A-3-504	*
137	SAROJ KANTA CHOUDHURY & SATISH CH.CHOUDHURY	A-3-505	105765
138	GANGADHAR NAYAK	A-3-506	105765
139	NRUSINGHA CH BEHERA	A-3-601	127892
140	Dr ARJUN SUBUDHI & TRINATH SUBUDHI	A-3-602	110111
141	RAMESH CHANDRA SAHOO & BASANTI SAHOO	A-3-603	88379
142	NAKUL CHANDRA DORA	A-3-604	92725
143	NIRANJAN SWAIN & PRAVAMAYEE JENA	A-3-605	127892
144	GOBINDA CHANDRA SAHU & SATYA SUNDAR SAHU	A-3-606	210212
145	LALIT KUMAR DASH & PRAMILA DASH	A-3-701	110111
146	RANJEET KUMAR PANDA & BASANTI MANJARI PANDA	A-3-702	118014
147	SNIGDHARANI MISHRA & IPSITA JAYANTI MISHRA	A-3-703	92725
148	MANDAKINI MISHRA & LUCY MISHRA	A-3-704	88379
149	PRADIP KUMAR PRADHAN	A-3-705	110111
150	SASMITA MOHAPATRA & JITENDRA NATH SWAIN	A-3-706	201914
151	SAMIR RANJAN NAYAK	A-3-801	105765
152	GOBINDA CHANDRA PANI & ULLASH PANI	A-3-802	110111
153	SUDHARANI MISHRA & SUDHANSHU SEKHAR MISHRA	A-3-803	88379
154	MIHIR KUMAR MOHANTY & MINATI MOHANTI	A-3-804	92725
155	KAUSTUBHA BHUSAN BEHERA	A-3-805	*
156	P VENUGOPALA RAO & P K RAJIV	A-3-806	110111
157	ASHOK KUMAR ROUTRAY	A-3-901	110111
158	SHILPA KHURANA & KIRAN KHURANA	A-3-902	*
159	RABINDRA KUMAR PANI & SUDHAKAR PANI	A-3-903	92725
160	SUROJIT SINGH & PADMALAYA SINHA	A-3-904	*

161	BIRANCHI KUMAR SAHU & SWATI SURAVI	A-3-905	110111
162	DR.SRIKANTA DAS & BINA DAS	A-3-906	105765
163	BHARATI NAYAK	A-4-101	110111
164	PRAFULLA KUMAR PANDA & GEETANJALI MAHAPATRO	A-4-102	*
165	ALAKA DAS	A-4-103	92725
166	DR BANAMBAR SENAPATI & SUMIT KU SENAPATI	A-4-104	88379
167	BANANI PATNAIK & ARUN KUMAR PATNAIK	A-4-105	210212
168	SUDEEP KUMAR PATRA & ANITA RANI PATNAIK	A-4-106	105765
169	KRISHNENDU CHATTOPADHYA & SIVA PRAKASH CHATTOPADHYA	A-4-201	105765
170	JITENDRA JENA & BISHNUPRIYA JENA	A-4-202	*
171	UMAKANTA BAL & KSHETRA MANI ROUTARAY	A-4-203	88379
172	SRIMANTA KUMAR PANDA	A-4-204	92725
173	SANJAYA MOHANTY & NILASHREE MOHANTY	A-4-205	127892
174	HRUSIKESH DASH & USHARANI DASH	A-4-206	*
175	BALA KRUSHNA RATH & SUNITA RATH	A-4-301	*
176	AJAYA KUMAR SAHOO & PRADEEP KUMAR SAHOO	A-4-302	158186
177	RAMA PRASAD MOHAPATRO	A-4-303	92725
178	SATISH CHANDRA MOHANTY &SAMISH KUMAR MOHANTY	A-4-304	*
179	BRAJA BANDHU KAR & PRASANTA KAR	A-4-305	110111
180	PRADEEP KUMAR MOHANTY	A-4-306	*
181	KAILASH CHANDRA DASH & SIDHARTH DASH	A-4-401	105765
182	ARATI PATTNAIK & CHANDRA SEKHAR MOHANTY	A-4-402	*
183	PRADEEP KUMAR PATRA	A-4-403	88379
184	SUBHASIS MOHANTY & ARATI MOHANTY	A-4-404	92725
185	DHANESWAR SAHOO & AMLAN ANUPAM	A-4-405	127892
186	KANAKLATA RATH & BRAJA MOHAN RATH	A-4-406	110111
187	PRANATI DAS	A-4-501	*
188	TARA PRASAD RATH	A-4-502	105765
189	PRAKASH CHANDRA TRIPATHY & CHANDAN KISHORE TRIPATHY	A-4-503	92725
190	NIRANJAN SAHU	A-4-504	88379
191	SUBASH CHANDRA SAMAL	A-4-505	110111
192	DIGAMBAR MALLICK & TAPAS RANJAN MALLICK	A-4-506	114063
193	SIBA PRASAD MISHRA & BRAJA SUNDRA MISHRA	A-4-601	105765
194	CHARUPAMA MISHRA & SARAT KU MOHAPATRA	A-4-602	110111
195	SURENDRA KUMAR PATRA & BANSHIDHAR PATRA	A-4-603	110506
196	RAMA KRUSHNA PANI & KANCHAN PANI	A-4-604	92725
197	GYANENDRA JENA & ASHIRBAD JENA	A-4-605	105765
198	AMIYA KUMAR SAHOO	A-4-606	110111
199	SIDHESWAR NAYAK & PRAMILA NAYAK	A-4-701	110111
200	SANTI LATA MOHANTY & KUMAR KANTI MOHANTY	A-4-702	105765
201	MANASI MOHANTY & ANOJ KUMAR PRADHAN	A-4-703	92725
202	SAMIR KUMAR PANDA & ANJALI PATI	A-4-704	88379
203	MANORANJAN BEHERA & NITYANANDA BEHERA	A-4-705	110111
204	RAJ KISHORE MISHRA & BIBHUDATTA MISHRA	A-4-706	*
205	RAJESWARI JENA & SOUMIT JENA	A-4-801	201914
206	SAROJ KUMAR DASH& SHYMALI KHADANGA	A-4-802	*
207	CHITRA SWAIN	A-4-803	110506
208	MALATI ROUT & BASANTA KUMAR ROUT	A-4-804	*

209	DR. SHASHADHAR SAMAL	A-4-805	105765
210	RAJA KISHORE SAMAL	A-4-806	110111
211	SANJEEV KUMAR PADHEE & USHARANI PADHI	A-4-901	*
212	CAPT. SABIR ABDUL MOHAMMED	A-4-902	105765
213	GIRIJA NANDAN MAHAPATRA	A-4-903	*
214	DR KAILASH CHANDRA PATRA & KAMALA PATRA	A-4-904	48207
215	PITAMBER TRIPATHY & DAMODAR TRIPATHY	A-4-905	*
216	PRATYUSH KUMAR & BANABIHARI PANDA	A-4-906	105765
217	Dr HARISH DAS & NIRUPAMA DAS	B-1-201	44914
218	TRILOCHAN MISHRA & PRAVAT NALINI MISHRA	B-1-202	49260
219	AJIT KUMAR ROY & BISHAKA ROY	B-1-203	85745
220	UMA PRASAD PANDA & KUMUDINI PANDA	B-1-204	49260
221	NUSRAT JAHAN & MIRAZ ASIF ALAM B	B-1-205	85745
222	PRAFULLA KUMARI NAIK & DUSMANTA KUMAR NAIK	B-1-206	44782
223	BASUDEB PRUSTY	B-1-207	44914
224	LAXMI KANTA DAS & BINODINI DAS	B-1-208	44782
225	ASHOKA KUMAR RATH & OMKAR RATH	B-1-209	67041
226	PRAVAT KU TRIPATHY	B-1-210	44782
227	BIBHUTI BHUSAN KAR & BISHNU CHARAN KAR	B-1-211	67041
228	UPALI UPAMITA DAS	B-1-212	94042
229	GOLAK BIHARI BISWAL	B-1-301	*
230	BISHNU PRIYA MOHAPATRA & BILASINI MOHAPATRA	B-1-302	44914
231	PUSPANJALI PADHI & CHANDRA SEKHAR PADHI	B-1-303	*
232	ANTARYAMI JENA & SUVENDU SEKHAR JENA	B-1-304	61246
233	PRACHI PARIMITA MOHANTY	B-1-305	94042
234	LAXMI NARAYAN BISWAL & PADMANAV BISWAL	B-1-306	40831
235	RABI NARAYAN ROUTRAY	B-1-307	49260
236	LAXMI NARAYAN BISWAL & PADMANAV BISWAL	B-1-308	40831
237	TAPAN KUMAR MOHANTY	B-1-309	94042
238	SUSANTA KUMAR SINGH	B-1-310	85745
239	SABITA JENA	B-1-311	49260
240	BHARATI KRUSHNA DAS & MAYADHAR SAHU	B-1-312	89564
241	BIJAY KUMAR DASH & PARBATI DASH	SHOP-1	*
242	IPSITA JAYANTI MISHRA	SHOP-2	*
243	SNIGDHARANI MISHRA & IPSITA JAYANTI MISHRA	SHOP-3	*
	Grand Total of the Profiteered Amount to be passed on		1,85,70,263

'*':-No amount is indicated in the DGAP's report dated 28.01.2021 (Annexure-10).

27. We also order the profiteered amount of Rs. 1,85,70,263/- along with the interest @ 18% from the date of receiving of such amount from each homebuyer/shop buyer till the date of passing the benefit of ITC by way of refund 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.

28. It is also evident from the above narration of facts that the Respondent has denied the benefit of ITC to his home buyers in contravention of the provisions of Section 171 (1) of the CGST Act, 2017 and has committed an offence under Section 171 (3A) of above Act. That Section 171 (3A) of the CGST Act, 2017 has been inserted in the CGST Act, 2017 vide Section 112 of the Finance Act, 2019, and the same became operational w.e.f. 01.01.2020. As the period of investigation was

01.07.2017 to 30.09.2020, 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.

29. The concerned jurisdictional CGST/SGST Commissioner is directed to ensure compliance of this Order. It may be ensured that the benefit of ITC is passed on to each homebuyer/shopbuyer as per the details provided in para 26 supra of this Order along with interest @18% as prescribed. 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. LIC HFL Care Homes Ltd., Project- 'Jeevan Ananda', Location- Mouja Aiginia, Khandagiri, Bhubaneswar, Tahasil, Khurda District and amount of profiteering so that the concerned homebuyers/shopbuyers can claim the benefit of ITC if not passed on. Homebuyers may also be informed that the detailed NAA Order is available on Authority's website www.naa.gov.in. Contact details of concerned Jurisdictional CGST/SGST Commissioner may also be advertised through the said advertisement.

30. 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.

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

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

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

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

32. A copy of this order be sent, free of cost to the Applicant No. 1, the DGAP, the Respondent, Commissioners CGST/SGST Bhubaneshwar, the Principal Secretary (Town and Country Planning), Government of Odisha for necessary action.

Sd/-
(Amand Shah)
Technical Member &
Chairman

Sd/-
(Pramod Kumar Singh)
Technical Member

Sd/-
(Hitesh Shah)
Technical Member

Certified Copy

(Dinesh Meena)
Secretary, NAA

DINESH MEENA, IRS
Secretary
National Anti-Profiteering Authority
Govt. of India

File No. 22011/NAA/16/LIC/2021 | 5892 — 5898 Date:- 20.06.2022

Copy To:-

1. M/s LIC HFL CARE Homes Limited, IPICOL House, 3rd Floor, Rupali Square, Distt.- Khordha ,Bhubaneswar-751022, Odidha.
2. Shri. Niranjan Swain, Plot No. 973/3154, Prakurti Vihar Delta Area, Baramunda, Bhubaneshwar-751003.
3. Directorate General of Anti-Profiteering, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, New Delhi-110001.
4. Chief Commissioner of CGST Bhubaneswar Zone, C.R. Building, GST Bhawan, Rajaswa Vihar, Bhubaneswar, Odisha-751007 (E-mail:- ccu-cexbbr@nic.in).
5. Office of the Comissioner of State Tax & GST, Banijyakar Bhawan, Old Secretariat Compound, Cuttack -753 001 (Email:- cct@odishatax.gov.in).
6. Development Commissioner-cum-Additional Chief Secretary, Planning & Covergence Department, Sachivalaya Marg, Unit-2, Bhubaneswar, Odisha (E-mail dcplg@ori.nic.in)
7. NAA Website/Guard File.

DINESH MEENA, IRS
Secretary
National Anti-Profiteering Authority
Govt. of India