BEFORE THE NATIONAL ANTI-PROFITEERING AUTHORITY

UNDER THE CENTRAL GOODS & SERVICES TAX ACT, 2017

Case No.	57/2019
Date of Institution	22.05.2019
Date of Order	19.11.2019

In the matter of:

1. Ms. Santosh Kumari through Shri Saurabh Prabhakar, 400, 2nd Floor, Street No. 22, Sector-22A, Gurgaon, Haryana-122017.
2. Shri Vijai Pratap, 244/1, Adarsh Nagar, New Railway Road, Gurugram, Haryana-122001.
3. Shri Ashok Kumar Pawar, SMO No. 142/2, 54, Air Force Station, Near Atul Kataria Chowk, Gurgaon, Haryana- 122005.
4. Smt. Sangeeta Ahlawat, 1593, Ke Opposite Side, Sector- 45, Gurgaon, Haryana.
5. Shri Rakesh Kumar Arora, H. No. 1593, Sec. 13, HUDA, Bhiwani, Haryana.
6. Shri Sahil Mehta, 1614-A, Mehta Nagar, Hissar, Haryana- 125001.
7. Smt. Shikha Arora, 1374, Sec-04, Urban Estate, Gurgaon- 122001.
8. Smt. Shelly Chauhan, shellychauhan16@gmail.com.
9. Shri Manish Malik, 218/29, Ram Gopal Colony, Rohtak, Haryana-12400.
10. Ms. Richa C/o Sh. Anil Kumar Khetan, Rudra Colony, Tosham Road, Bhiwani, Haryana-127021.

11. Sh. Mahesh Kumar, Flat No. 255, PKT-7, Sector-12, Dwarka, New Delhi-110078.
12. Sh. Mahesh Jamna Dass Dyal Ji Harkhani S/o Sh. Jamna Dass Dyal Ji Harkhani, No. 81, Ist Main Road, Ist Floor, Nagappa Reddy Layout, Kaggadasapura, C. V. Raman Nagar, Bangalore, Karnatka-560093.
13. 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 Aster Infrahome Pvt. Ltd, 21-22, Ground Floor, Vipul Agora Complex, MG Road, Gurugram, Haryana- 121002.

Respondent

Quorum:-

1. Sh. B. N. Sharma, Chairman
2. Sh. J.C.Chauhan, Technical Member
3. Ms. R. Bhagyadevi, Technical Member
4. Sh. Amand Shah, Technical Member.

Present:-

1. Sh. Saurabh Prabhakar for Applicant No. 1, Smt. Sangeeta Ahlawat Applicant No. 4 and Sh. Manish Malik Applicant No. 9 in person.
2. Sh. Akshat Aggarwal, Deputy Commissioner for the DGAP.
3. Sh. Narendra Kumar, C.A., Authorised Representative for the Respondent.

ORDER

1. The present Report dated 28.02.2019 has been furnished by the Applicant No. 13 i.e. the Director General of Anti-Profiteering (DGAP), under Rule 129 (6) of the Central Goods & Services Tax (CGST) Rules, 2017. The brief facts of the present case are that the Haryana State Screening Committee on Anti-profiteering, vide the minutes of its meeting held on 20.06.2018 had referred 7 applications to the Standing Committee on Anti-profiteering under Rule 128 (2) of the Central Goods and Services Tax Rules, 2017, alleging profiteering by the Respondent in respect of purchase of flats in the Respondent's project "Green Court" situated in Sector 90, Gurugram, Haryana. Sh. Shaurabh Prabhakar has filed the above application on behalf of the Applicant No. 1. The above Applicants had alleged that the Respondent had not passed on the benefit of Input Tax Credit (ITC) to them by way of commensurate reduction in the price of the flats. These complaints were examined by the Standing Committee on Anti-profiteering in its meetings held on

07.08.2018 & 08.08.2018 and were forwarded to the DGAP for detailed investigation under Rule 129 (1) of the CGST Rules, 2017. Further, 05 more applications were forwarded to the DGAP by the Standing Committee on Anti-profiteering vide minutes of its meetings dated 6.09.2019, 08.10.2019, 04.10.2019 and 25.10.2018. As the investigation was already underway, these Applicants were made co-Applicants in the ongoing investigation. Therefore, the Report covers a total number of 12 applications filed against the Respondent.

2. The DGAP on receipt of the above minutes from the Standing Committee on Anti-profiteering had called upon the Respondent vide his notice dated 10.09.2018 to submit his reply as to the whether the ITC benefit was passed on by him to his recipients and also asked him to suo-moto determine the quantum of benefit to be passed on. The Respondent vide letters dated 24.09.2018, 03.10.2018, 17.10.2018, 26.10.2018, 12.11.2018, 16.11.2018, 07.12.2018, 28.12.2018, 31.12.2018, 02.01.2019, 09.01.2019, 12.02.2019, 14.02.2019 and 22.02.2019 has filed replies. The Respondent was given opportunity to inspect the evidence supplied by the above Applicants between 17.09.2018 to 19.09.2018 however, he did not inspect it. The above Applicants were also afforded opportunity by the DGAP to examine the evidence furnished by the Respondent between 31.12.2018 to 02.01.2019 which was availed by the Applicants No. 1, 5, and 8. Time limit to complete the above investigation was extended till 28.02.2019 by this Authority vide its orders dated 27.11.2018 and 29.01.2019. The present investigation

pertains to the period between 01.07.2017 to 31.08.2018. The written submissions of the Respondent are summed up as follows:-

a. That the Respondent was under regular/normal Scheme with regard to Value Added Tax (VAT) in Haryana and as such, he had availed VAT credit in the pre-GST period on the purchases made during that period.

b. That as the service of construction of affordable housing, provided by the Respondent, was exempted from Service Tax, vide Notification No. 25/2012-ST dated 20.06.2012, as amended by Notification No. 9/2016-ST dated 01.03.2016, the Respondent was exempted from any Service Tax liability on his receipts in the pre-GST era (01.03.2016 onwards) and was also not eligible to avail any CENVAT credit. As Service Tax was not leviable on the projects related to Affordable Housing Policy, 2013, he did not charge any Service Tax from his clients w.e.f. 01.03.2016.

c. That the Respondent did not contest the fact that the benefit of ITC had not been passed on to the recipients by him prior to this investigation.

d. That the Respondent contended that since credit of Central Excise Duty was not allowed to the developers/builders in the pre-GST regime, the Central Excise Duty was cost to the Respondent and as per the provisions of Section 171 of the Central Goods and Services Tax Act, 2017, the Respondent was ready to pass on the benefit of additional ITC of GST to his customers.

3. The Respondent has also submitted the following documents along with his replies:-

(a) Copies of GSTR-1 and GSTR-3B Returns for the period from July, 2017 to August, 2018.

(b) Copies of Tran-1 and Tran-2 Returns for the period July, 2017 to December, 2017.

(c) Copy of Electronic Credit Ledger for the period from July, 2017 to August, 2018.

(d) Copies of VAT Returns and ST-3 Returns for the period from April, 2016 to June, 2017.

(e) Copies of all Demand letters issued in the names of the Applicants.

(f) Copies of CENVAT/Input Tax Credit Register for the FY 2016-17, 2017-18 and from April, 2018 to August, 2018.

(g) Details of applicable tax rates, Pre-GST & Post-GST.

(h) Copies of Balance Sheets for the FY 2016-17 & 2017-18.

(i) Copy of Certificate regarding expenses and sources of funds, issued by M/s Design Axis Architects and details of numbers of flats.

(j) Details of VAT, Service Tax, ITC of VAT, CENVAT Credit for the period from April, 2016 to June, 2017 and output GST and ITC of GST for the period from July, 2017 to August, 2018 for the project "Green Court".

(k) Reconciliation of turnover reported in GSTR-3B Returns with that in the list of home buyers.

(l) Details of amount received from home buyers till 30.06.2017 and during the period from 01.07.2017 to 31.08.2018.

(m) Applicability of provisions of Haryana VAT Act, 2003 to developers/builders of affordable residential complexes under regular/normal Scheme.

(n) Category-wise details of sold and unsold flats as on 30.06.2017 and 31.08.2018 and copy of RERA registration.

4. The DGAP in his Report has stated that the Respondent submitted the demand and payment schedule in respect of the flat measuring 526 sq. ft. booked by Ms. Santosh Kumari, Applicant No. 1 at the basic sale price of Rs. 4000/- per sq. ft. The details of instalments and taxes paid by the Applicant No. 1 to the Respondent are furnished in Table-'A' below.

Table-'A'

(Amount in ₹.)

S. No.	Payment Stage	Due Date	Basic %	BSP	Service Tax	VAT	GST	Other	Total Payable	Total Paid
1	Application for allotment (Date of Draw)	08.10.2015	5.00%	1,07,700	3,328				1,11,028	1,11,028
2	On allotment	20.08.2015	20.00%	4,30,800	15,078				4,45,878	4,45,878
3	Date of Draw+ 6 months	17.02.2016	12.50%	2,69,250					2,69,250	2,69,250
4	Date of Draw+ 12 months	05.08.2016	12.50%	2,69,250					2,69,250	2,68,600
5	Date of Draw+ 18 months	05.02.2017	12.50%	2,69,250					2,69,250	2,69,250
6	Date of Draw+ 24 months	23.08.2017	12.50%	2,69,250			32,310		3,01,560	3,01,560
7	Date of Draw+ 30 months	19.02.2018	12.50%	2,69,250			21,540		2,75,670	2,75,670
8	Date of Draw+ 36 months	20.08.2018	12.50%	2,69,250			21,540		2,75,670	2,90,790
Total			**100%**	**21,54,000**	**18,406**		**753,90**		**22,47,796**	**22,47,796**

5. The DGAP has claimed that the contention of the Respondent that the additional benefit of ITC in the GST period was only on account of Central Excise Duty on the inputs, the credit of which was not available in the pre-GST period and which was cost to the Respondent, may be correct but it was a fact that if such additional benefit was not passed on by the Respondent to the home buyers, it would amount to profiteering. Moreover, the profiteering, if any, has to be determined at a given point of time, in terms of Rule 129 (6) of the Rules. Therefore, he has stated that the ITC available to the Respondent and the amount received by him from the Applicants and other recipients post implementation of GST, has to be taken into account to determine whether the benefit of ITC has been passed on by the Respondent to the recipients.

6. The DGAP has also submitted that the other aspect to be borne in mind while determining profiteering was that para 5 of Schedule-III of the Central Goods and Services Tax Act, 2017 (Activities or Transactions which shall be treated neither as a supply of goods nor a supply of services) read 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 Central Goods and Services Tax Act, 2017 read as "*(b) construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier*". Thus, the ITC pertaining to the units which were under construction but had not been sold was provisional ITC which may be required to be reversed by the

Respondent, if such units remained unsold at the time of issue of completion certificate, in terms of Section 17(2) & Section 17(3) of the Central Goods and Services Tax Act, 2017, which read as under:-

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

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

Therefore, he has contended that the ITC pertaining to the unsold units was outside the scope of this investigation and the Respondent was required to recalibrate the base price of such units to be sold to the prospective buyers by considering the net benefit of additional ITC available to them post-GST.

7. The DGAP has further stated that in the pre-GST era, as the service of construction of affordable housing, provided by the Respondent, was

exempt from Service Tax, vide Notification No. 25/2012-ST dated 20.06.2012, as amended by Notification No. 9/2016-ST dated 01.03.2016, the Respondent was not eligible to avail credit of Central Excise Duty paid on inputs/capital goods or Service Tax paid on input services but the Respondent has wrongly availed credit of Service Tax paid on input services in his ST-3 Returns, which has not been considered for the purpose of this investigation. He has also stated that the Respondent has submitted that as he was under regular/normal Scheme under VAT in Haryana, he was eligible to avail credit of VAT paid on the inputs. The DGAP has further stated that though the Respondent has claimed credit of VAT paid on the inputs in the pre-GST period from 01.04.2016 to 30.06.2017, his output VAT liability has not been discharged in the above period. He has also submitted that the Respondent has claimed that the exact taxable value and his VAT liability would be known only when VAT assessment for the relevant period would be done and he would accordingly charge VAT from his customers and discharge his VAT liability. In support of his claim, the Respondent has submitted a copy of the agreement executed with the Applicant No. 5, wherein it has been mentioned that the applicable municipal tax, property tax, Service Tax, VAT, GST and/or any other tax or charges as per law, would be collected from the above Applicant retrospectively or prospectively. The DGAP has further submitted that as the Respondent had not mentioned any turnover in his VAT Returns or ST-3 Returns on account of exemption, the gross receipts from the homebuyers as per the homebuyers list, had been considered as the turnover for determining the ratio of VAT credit available to the

Respondent and the turnover in the pre-GST Period. He has also claimed that post-GST, the Respondent was eligible to avail ITC of GST paid on inputs and input services including on the sub-contracts. From the data submitted by the Respondent, duly verified from his returns filed during the pre-GST period from April, 2016 to June, 2017 and the post-GST period from July, 2017 to August, 2018, the details of the ITC availed by the Respondent and the Respondent's turnover the DGAP has computed the ratio of ITC to the turnover during the above periods, as has been furnished in the Table-B below:-

Table-'B' (Amount in ₹.)

S. No.	Particulars	April, 2016 to March, 2017	April, 2017 to June, 2017	Total (Pre-GST)	01.07.2017 to 24.01.2018	25.01.2018 to 31.08.2018	Total (Post-GST)
1	CENVAT credit of Service Tax Paid on Input Services (A)	0	0	0	-	-	-
2	Credit of VAT Paid on Purchase of Inputs (B)	38,99,804	1,801	39,01,605	-	-	-
3	Input Tax Credit of GST availed (C)	0	0	0	4,35,92,239	1,86,26,110	6,22,18,349
4	Total CENVAT/VAT/Input Tax Credit Available (D)= (A+B) or (C)	38,99,804	1,801	39,01,605	4,35,92,239	1,86,26,110	6,22,18,349
5	Total Turnover (E)	65,43,64,625	0	65,43,64,625	33,07,15,750	33,52,90,000	66,60,05,750
10	Total Saleable Area (in Sq. Ft.) (F)			779876			779876
11	Total Sold Area relevant to Turnover from 1384 flats (in Sq. Ft.) (G)			645404			645404
12	ITC relevant to Sold Area [(H)= (D)*(G)/(F)]			32,26,861			5,14,90,200
Ratio of Input Tax Credit to Turnover [(I)=(H)/(E)]				**0.49%**			**7.73%**

8. The DGAP has further claimed that from the above Table-'B', it could be seen that the ITC as a percentage of the total turnover that was available to the Respondent during the pre-GST period from April, 2016 to June, 2017 was 0.49% and during the post-GST period from July, 2017 to August, 2018, it was 7.73% which clearly confirmed that post-GST, the Respondent has benefited from the additional ITC to the tune of 7.24% [7.73% (-) 0.49%] of the turnover. He has also observed that the Central Government, on the recommendation of the GST Council, had levied 18% GST (effective rate was 12% in view of 1/3rd abatement on value) on construction service, vide Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017. The effective GST rate on construction service in respect of affordable and low-cost housing was further reduced from 12% to 8%, vide Notification No. 1/2018-Central Tax (Rate) dated 25.01.2018. The DGAP has also contended that in view of the change in the GST rate after 01.07.2017, the issue of profiteering had been examined by him in two parts, i.e. by comparing the applicable tax rate and the availability of ITC during the pre-GST period from April, 2016 to June, 2017 when only VAT was payable with (1) the post-GST period from July, 2017 to 24.01.2018 when the effective GST rate was 12% and (2) with the GST period from 25.01.2018 to 31.08.2018 when the effective GST rate was 8%. Accordingly, on the basis of Table-B above, the comparative figures of tax rate, ratio of ITC to the Respondent's turnover in the pre-GST and post-GST periods, the recalibrated basic price on account of benefit of ITC credit and the excess collection by the Respondent i.e. profiteering during the post-GST period, has been tabulated by the DGAP in the Table-'C' below:-

Table-'C'

(Amount in ₹.)

S. No.	Particulars		Pre-GST	Post- GST		
1	Period	A	April, 2016 to June, 2017	July, 2017 to January 24th, 2018	January 25th, 2018 to August, 2018	Total July, 2017 to August, 2018
2	VAT/Service Tax/GST rate (%)	B	-	12	8	
3	Ratio of CENVAT/ VAT/Input Tax Credit to Turnover as per Table – 'B' above (%)	C	0.49	7.73	7.73	7.73
4	Increase in ratio of input tax credit availed post-GST (%)	D	-	7.24	7.24	7.24
5	Analysis of increase in input tax credit:					
6	Basic Price collected during July, 2017 to August, 2018 (Gross Turnover) (₹)	E		33,07,15,750	33,52,90,000	66,60,05,750
7	GST Collected on Basic Price(₹)	F= E*12% or 8%		3,96,85,890	2,68,23,200	6,65,09,090
8	Total Demand raised (₹)	G=E+F		37,04,01,640	36,21,13,200	73,25,14,840
9	Recalibrated Basic Price(₹)	H=E*(1-D) or 92.76 % of E		30,67,71,930	31,10,15,004	61,77,86,934
10	GST @12/8% (₹)	I= H*12/8%		3,68,12,632	2,48,81,200	6,16,93,832
11	Commensurate demand price (₹)	J= H+I		34,35,84,561	33,58,96,204	67,94,80,766
12	Excess Collection of Demand or Profiteered Amount (₹)	K= G-J		2,68,17,079	2,62,16,996	5,30,34,074

9. The DGAP has further claimed that from the Table- 'C' above, it appeared that the additional ITC of 7.24% of the turnover, should have resulted in commensurate reduction in the base price as well as cum-tax-price and therefore, in terms of Section 171 of the Central Goods and Services Tax Act, 2017, the benefit of the aforesaid additional ITC that has accrued to the Respondent, was required to be passed on to the recipients. The DGAP has also contended that the amounts collected by the Respondent from the above Applicants and the other home buyers during the period

from 01.07.2017 to 24.01.2018, the amount of benefit of ITC which needed to be passed on by the Respondent to the recipients or in other words, the profiteered amount came to ₹ 2,68,17,079 /- which includes 12% GST on the base profiteered amount of ₹ 2,39,43,820 /-. He has further contended that the amount of benefit of ITC that needed to be passed on by the Respondent to the recipients or in other words, the profiteered amount during the period from 25.01.2018 to 31.08.2018, came to ₹ 2,62,16,996/- which includes 8% GST on the base profiteered amount of ₹ 2,42,74,996/. Therefore, he has claimed that the total profiteered amount during the period from 01.07.2017 to 31.08.2018 came to ₹ 5,30,34,074 /- which includes GST @12% or 8% on the base profiteered amount of ₹ 4,82,18,816/-. The home buyer and unit no. wise break-up of this amount was given by the DGAP as per Annexure-25 of his above Report.

10. The DGAP has also submitted that the Respondent was constructing a total number of 1658 flats however, bookings for only 1482 flats were made in the pre-GST period and no new booking had been made in the post-GST period, but the bookings of 98 flats have been cancelled. He has further submitted that the demands raised on all the 1384 home buyers (1482-98=1384) during the pre-GST period as well as in the post-GST period under investigation w.e.f. 01.07.2017 to 31.08.2018 had been reconciled with the home buyers list. Therefore, he has claimed that the computation of profiteering has been done with respect to those flats only where demands have been raised or payments have been received in the post-GST period. He has further claimed that if the ITC in respect of the

unsold flats or the flats on which no consideration has been received in the post-GST period, was taken into account to calculate the profiteering in respect of the flats where payments have been received in the post-GST period, the ITC as a percentage of turnover would be distorted and erroneous. Therefore, the profiteering in respect of the remaining 274 flats should be calculated when the consideration is received in the post-GST period, by taking into account the proportionate ITC in respect of such units.

11. The DGAP has claimed that the benefit of additional ITC to the extent of 7.24% of the turnover, has accrued to the Respondent post-GST and the same was required to be passed on to the Applicants and the other recipients, which has not been done by him and hence provisions of Section 171 of the Central Goods and Services Tax Act, 2017 have been contravened by the Respondent inasmuch as the additional benefit of ITC @ 7.24% of the base price received by the Respondent during the period from 01.07.2017 to 31.08.2018 has not been passed on to the Applicants and other recipients. He has further claimed that on this account, the Respondent has realized an additional amount of ₹ 5,25,09,127/- as has been mentioned in Annexure-25 which includes the profiteered amount @7.24% of the turnover (basic price) from 1384 recipients. He has also intimated that these recipients were identifiable as per the documents on record as the Respondent has provided their names and addresses along with the unit no. allotted to them. Therefore, he has averred that this additional amount of ₹ 5,25,09,127/- was required to be returned to such eligible recipients. He has also stated that

the Respondent has supplied construction service in the State of Haryana only. The DGAP has further stated that the present investigation covered the period from 01.07.2017 to 31.08.2018 only and profiteering, if any, for the period post August, 2018 has not been examined by him as the exact quantum of ITC that would be available to the Respondent in future, could not be determined at this stage when the construction of the project was yet to be completed.

12. The above Report of the DGAP was considered by the Authority in its meeting held on 05.03.2019 and it was decided to issue notice to the Respondent to explain why the Report furnished by the DGAP should not be accepted and his liability for violation of the provisions of Section 171 of the CGST Act, 2017 should not be fixed. He was also directed to reply why penalty under Section 29, 122-127 of the above Act read with Rule 21 and 133 of the CGST Rules, 2017 should also not be imposed on him. It was also decided to hear the above Applicants and the Respondent on 27.03.2019 which was postponed to 12.04.2019 on the request of the Respondent. On 12.04.2019 Sh. Saurabh Prabhakar appeared for the Applicant No. 1, Smt. Sangeeta Ahlawat Applicant No. 4, Sh. Manish Malik Applicant No. 9 were present in person, Sh. Akshat Aggarwal, Deputy Commissioner was present for the DGAP while Sh. Narendra Kumar, C.A., Authorised Representative appeared on behalf of the Respondent. Further hearings were held on 26.04.2019, 18.06.2019. The Respondent has filed written submissions dated 12.04.2019, 26.04.2019, 18.06.2019, 30.08.2019 and 13.11.2019 which are summed up as follows:-

I. That the DGAP has not considered provision of section 171 of the Central Goods and Service Tax Act, 2017 (i.e. CGST Act, 2017) properly in his investigation dated 28.02.2019.

II. That initially CENVAT Credit under the Service Tax law and the ITC on VAT under the Haryana Value Added Tax Act, 2003 was allowed to him. The Service Tax was exempted later on through amended Notification No. 09/2016 –Service Tax dated 01.03.2016 in case of the residential complexes under Affordable Housing Scheme so there was no benefit of CENVAT Credit because the down line contractors / sub-contractors were exempted and he was also not charging Service Tax in the demands raised to his customers but VAT input credit was allowed under the Haryana VAT Act because he had opted for regular scheme to discharge VAT liabilities on transfer of goods during the execution of the construction activities.

As per the provision of Service Tax law, CENVAT Credit of excise duty on materials was not allowed to him and the Excise Duty was cost to him before the GST regime so he had obtained benefit of additional ITC post-GST which he was ready to pass on to his customers subject to adjustment of any ITC which would be cost to him at the time of completion of the project because he would not be able to claim refund of excess amount of ITC after completion of the project as per the Notification No. 15/2017-Central Tax (Rate) dated 28 June, 2017.

III. That based on the provision of Section 171 of CGST Act, 2017, he has worked out actual benefit of Excise Duty which came to Rs.

3,04,63,210/, pertaining to the sold and unsold units on the basic purchase prices of the materials purchased during the period from July, 2017 to March, 2019 on which Excise Duty was applicable before the GST regime but credit of Excise Duty was not allowed to him as a developer / builder. He has not considered/ reduced the ITC amount which would be cost to him at the time of completion of the project in the above calculation of amount of Excise Duty.

IV. That the following duties and taxes were applicable before the GST regime:

a) Under Central Government duties and taxes:

Central Excise Duty, Additional Duties of Excise, Excise on Medical and Toiletries Preparation Act, Additional Customs Duty (CVD), Special Additional Duty (4%), Surcharge and Cesses and Central Sales Tax (CST).

b) Under State Government duties and taxes:

State VAT, Purchase Tax, Entry Tax, Octroi, Local Body Tax, Sales Tax (partially), Entertainment Tax, Luxury Tax, Betting, Gambling and lottery Tax, surcharges and State cesses.

Since in the pre-GST regime, Excise Duty credit was not allowed to him while ITC on VAT was allowed so 50% of the Excise Duty amount of Rs. 1,52,31,605/- out of total amount of Rs. 3,04,63,210/- was payable to the customers as benefit of GST under Section 171 of the Central Goods and Service Tax Act, 2017. This has been

calculated on the basic purchase price of materials purchased during the period from July, 2017 to March, 2019 on which Excise Duty was applicable before the GST regime but credit of Excise Duty was not allowed to him. He has also submitted that he has not reduced that ITC amount which would be cost him at the time of completion of the project in the above calculation of the Excise Duty amount of Rs. 3,04,63,210/- and he was ready to pay Rs.1,52,31,605/- as a GST benefit to his customers.

V. That the documents submitted by him on 18.06.2019 were confidential because he has provided copies of various returns and requested not to share them with any other person.

VI. That as per the Notification No. 15/2017- Central Tax(Rate) dated 27.06.2017 there was no refund of unutilized ITC available at the time of completion of the project.

VII. He has also submitted copies of the VAT Returns, Service Tax Returns and GST Returns for the relevant period.

13. The Applicants No. 1 to 12 have also filed written submissions dated 12.04.2019, 26.04.2019 and 18.06.20 in response to the Report furnished by the DGAP as well as the submissions filed by the above Respondent which are mentioned as under:-

(I) That the amount of profiteering if acceptable to the Respondent, may be ordered for payment alongwith interest @ 18% p.a., as an interim relief to the above Applicants as they were from the lower middle

class as they have been allotted Affordable Flats as per the Haryana Affordable Housing Policy-2013.

(ii) That the Respondent has deposited total amount of Rs. 33,625/- only in cash as GST and the remaining amount of output liability has been met by the Respondent during the investigation period, out of the ITC admissible to him, the details of which are given below:-

Calculation of ITC Benefit for passing over to the buyers (Table -1)

Sl. No	Particulars	01.07.2018 to 24.01.2018 - @ 12%	25.01.2018 to 31.08.2018- 8%	Total (Post - GST)	Remarks
1	Total Taxable Value / Turnover	3307,15,750	352,90,000	660,05,750	From Table C of DGAP report
2	GST payable	3,96,85,890	3,68,23,200	6,65,09,090	From Table C of DGAP report
3	Cash paid	6,200	27,425	33,625	No other amount has been paid by Respondent. Annexure-1 attached.
4	Paid through ITC (calculated payable amount minus paid in cash) since must have availed against ITC	396,79,690	267,95,775	664,75,465	Column No. 2 minus 3
5	ITC availed	4,35,92,239	186,26,110	6,22,18,349	These figures are confusing as revenue can't allow to adjust excess ITC during the period prior to 25.01.2018 and lesser ITC after 25.01.2018.
6	Ratio of ITC availed /Turnover	12.00%	7.992%	-	-
7	Availed ITC (pre-GST era)	0.490%	0.490%	-	From Table –B of DGAP report
8	Net ITC availed in % age	11.51%	7.502%	-	Column 6 minus 7
9	Re-caliberated rate in percentage	88.490	92.498	-	100 minus column 8
10	Re-caliberated price	29,28,50,367	31,01,36,544	60,27,86,911	Column 1*9
11	GST @ 12% / 8%	3,51,18,044	2,46,10,924	599,28,968	-
12	Commensurate demand price (total of turnover + GST)	32,77,68,411	3,49,47,468	6,27,15,879	Column 10+11
13	Excess collection of demand or profiteering amount	4,26,33,229	2,71,65,732	697,98,961	Column 1 + 2 minus 12

As against total profiteering of Rs. 5,30,34,074/- as per Table 'C' of the DGAP's Report dated 28.02.2019, the profiteering worked out to be Rs. 6,97,98,961/-.

(iii) That as per Table B of the Report, calculation has been made in column No. 10 & 11 with regard to the saleable area and the sold area relevant to turnover however, in this regard, it was mentioned by the above Applicants that the total output liability was based on the turnover on monthly basis and GST was collected on that turnover only hence, any reduction due to sold area as against the saleable area has no relevance. As and when un-sold saleable area would be sold, proportionate GST would be determined during that particular month and output liability would again be liable to be paid either as set-off against the ITC or in cash. Hence, giving any discount for the same during the investigation period was not justified.

(iv) That the entire "saleable area" by the Respondent was not to be sold at the same rate but on different rates as per the Haryana Affordable Housing Policy-2013, according to which the flat area was to be sold at the maximum rate of Rs. 4,000/- per sq. ft. on carpet area basis and the Balcony area was to be sold at the maximum rate of Rs. 500/- per sq. ft. on the carpet area basis. Hence, any consideration of input based on the sq. ft. area basis, would be injustice to the buyers. The best way would be to allow ITC based on the amount, as the GST was also charged on the amount and not on the sq. ft. area.

(v) That the Respondent has to file GSTR every month and any output liability has to be either paid during that month against ITC or in cash.

Since the Respondent has only deposited the total amount of Rs. 33,625/- during the entire period of investigation in cash, remaining amount has been taken as adjusted against the ITC available and availed by him.

(vi) That the Respondent has agreed that there were several cancellations of the flats during the period of investigation, but it was not clear whether the GST collected from them has been returned to them, in full or in part. Since all the allottees were identifiable whose flats have been cancelled due to surrender or non-payment or any other reason, any amount of GST collected from them may be refund to them in full. If the same was not refunded or was not refundable due to any reason in that case, the amount of ITC due to them should be passed on, as would be paid to the existing buyers, in the interest of justice to them.

(vii) That there are certain complainants who have also filed complaints but who have not been included in the present proceedings due to procedural delays, they may also be allowed to join.

(viii) That as per para 17 (line-5) of the DGAP's Report dated 28.02.2019 it has been stated that the Respondent has wrongly availed credit of Service Tax paid on the input services in his ST-3 Return, which may be reported to the appropriate authority for necessary action.

(ix) That as per para 17 (line 17) of the DGAP's Report dated 28.02.2019 it has been mentioned that the Respondent has not mentioned any turnover in his VAT Returns or ST-3 Returns (on account of exemption) prior to 01.07.2017. Therefore, due to non-compliance of the above it would not be proper to allow ITC @ 0.49% to the

Respondent which has been calculated on the gross receipts by the DGAP on his own, and deducted / reduced from the ITC benefit of 7.73% arrived at by the DGAP in the post GST era. Any deduction as has been mentioned in the above statement in column no. 7 should not be made from the figures arrived by the Applicants which was 12% prior to 25.01.2018 and 7.992% after 25.01.2018.

(x) That the additional ITC of 12% prior to 25.01.2018 and 7.992% after 25.01.2018 should have resulted in commensurate reduction in the base price as well as cum-tax-price, therefore, in terms of Section 171 of CGST Act, 2017, the benefit of the additional ITC that has accrued to the Respondent, needed to be passed on to the recipients.

(xi) That the total amount of profiteering was as follows:-

From 01.07.2017 to 24.01.2018– Rs. 4,26,33,229

After 25.01.2018 to 31.08.2018 – Rs. 2,71,65,732

Total – Rs. 6,97,98,961

The above amount was payable as ITC refund alongwith interest @ 18% p.a. from the due date until the date of refund to all the existing buyers as all of them were identifiable. Since the Respondent has right to charge interest on the delayed payments including GST component, as per the foot note given in the demand note issued to the buyers, the interest was admissible to the buyers also from the due date of payment.

(xii) That the Respondent has issued Call Notice / Intimation Letter to the buyers from time to time though GSTIN and dates have been

mentioned in such Call Notices yet the same have not been issued in the appropriate format as per CGST Act, 2017 and it has not been titled as "Tax Invoice-cum-Call Notice". Therefore, necessary action as may be deemed fit may be taken against the Respondent.

(xiii) That with regard to para 23 of the Report dated 28.02.2018, it is mentioned that output liability of GST was to be determined monthly on the basis of declaration by the Respondent. As and when the un-sold units were sold and Tax Invoices were raised, output liability will be determined during that month only. The profiteering amount was exclusive for the period of investigation based on the output liability as declared by the Respondent in his monthly returns only.

(xiv) That the letter dated 20.02.2019, mentioned at page 22 of last para of point No. 1, issued by the Respondent to the DGAP stated that the VAT was going to be recovered from the customers at the time of possession of the flats therefore, the SGST amount could not be considered as benefit to be passed on to the customers under Section 171 of the CGST Act, 2017. The above request of the Respondent was violative of the CGST Act, 2017 as the benefit of ITC admissible during the pre-GST era could not be reduced from the total amount of SGST and CGST in the post-GST era.

(xv) That since the entire data has not been furnished by the Respondent and also copies of all the GSTR-3B have not been received, it was pre-mature for the Applicants to give their complete objections unless and until the non-confidential documents were shown to them and the copies of the documents, as may be necessary after inspection of the same, were supplied.

(xvi) That the benefit of ITC could not be appropriated by the Respondent as this was a concession given by the Government from its own tax revenue to reduce the prices being charged by the Respondent from the vulnerable section of society which could not afford high value apartments. The Respondent was not being asked to extend this benefit out of his own account and he was only liable to pass on the benefit of ITC which has become due to him by virtue of the grant of ITC on the Construction Service by the Government.

(xvii) That with the introduction of the Goods and Services Tax (GST) with effect from 01.07.2017, the Govt. has repeatedly clarified that under the GST full ITC was available for offsetting the headline rate of 12% and therefore, the input taxes embedded in the flat should not form a part of the cost of the flat. The input credits should take care of the headline rate of 12% and it was for this reason that refund of overflow of ITC to the Builders has been disallowed.

(xviii) That with effect from 25.01.2018, the Govt. has clarified that the builder or developer would not be required to pay GST on the construction service of flats etc. in cash but would have enough ITC in his books to pay the output GST and hence, he should not recover GST payable on the flats from the buyers. He can recover GST from the buyers of flats only if he recalibrated the cost of the flat after factoring in the full ITC available in the GST regime and has reduced the ex-GST price of flats. However, the Respondent has charged GST @ 12% and 8% forcibly from the Applicants knowing fully well that he could not charge the same as per the CGST Act and the above Rules and had not re-caliberated the price of the flats inspite of

the media reports, objections raised by the buyers and numerous number of mails and personal visits to the office of the Respondent and hence exemplary penalty should be imposed on him

(xix) That power to determine the methodology and procedure as to whether reduction in the rate of tax or benefit of ITC has been passed on by a registered person to the recipient by way of commensurate reduction in prices vests with this Authority under Rule 126 of the Central Goods and Services Tax Rules, 2017.

(xx) That in the GST regime, the transaction cost has increased to 12% and 8%, with input credit available on both and therefore, the cost of property transaction costs would increase by the amount of ITC, in case no benefit of ITC is passed on to the buyers. If the Respondent passed the input credit to the buyers, the increase in the property price could be restricted and then the home buyers will be benefited.

(xxi) That the DGAP has not correctly applied the provisions of Section 17 (2) of the above Act as the methodology prescribed under Rule 42 of proportionate bifurcation of ITC would not apply for construction of housing property and hence, provisions of Section 17(2) and Rule 42 should be read in conjunction with Sec 2 (106) with reference to the "Tax Period". For Construction of a building, before receipt of Occupation Certificate (OC), supply will be construction service and post receipt of OC the nature of supply would change to exempt supply. Hence, the entire ITC which was available for set off, on monthly basis, till the OC was issued, could be reversed when the OC was received but at that point of time during that particular tax period, the Respondent has right to determine the price

independently as it was a separate product compared to the building construction service. Section 17 (2) alongwith Rule 42, needed to be applied taking into consideration the tax period. Thus, for the purpose of calculating profiteering, overall ITC utilized needed to be taken into consideration on monthly basis only.

(xxii) That Section 17 (3) was also not applicable in the present case since on the un-sold flats when sold on or after 01.07.2017, full ITC could be claimed by the Respondent. Applicability of Sec 17 (3) should also be taken into consideration in conjunction with Section 2(106).

(xxiii) That had there been no ITC set off admissible to the Respondent, the entire amount of GST collected from the customers, was required to be deposited with the revenue authorities during the same month. Since as per CGST Act, 2017, payment of entire GST amount has been permitted to be set-off against the ITC admissible any amount which is set-off by the Respondent during a particular period has to be allowed as ITC benefit to the buyers during that particular period / month only. If the above method was taken into consideration then the proportionate ITC for unsold flats would be required to be reversed in each tax period. Thus, the entire amount of GST collected from the customers in proportion to unsold flats, would be required to be deposited with the revenue authorities during the respective month in cash. For the purpose of calculation of percentage of profiteering in the pre and post-GST scenario, the apportioning of ITC on the basis of saleable and un-sold area would not be correct approach. Builder has the right to independently

determine price of the building sold after 01.07.2017 and also have the right to the entire amount of ITC till receipt of OC. After receipt of OC also builder has the right to determine prices independently and in no case builder was getting impacted due to the application of Section 17 (2). At each stage builder has independent right to determine his price, based on prevailing market conditions. In no way section 17 (2) is prejudicial to the rights of builder. Hence for the purpose of determining actual profiteering for the buyers who had booked flats before 01.07.2017 appropriate application of Section 17 (2) was required to be undertaken. Even if the Section was applied as per the DGAP's Report, the equivalent amount deferred for allowing the benefit to the prospective buyers will have to be deposited by the builder on monthly basis in cash.

(xxiv) That in case, the benefit of un-sold area was claimed by the Respondent in a particular month when GSTR-3B Return has been filed, with the intention that the benefit to the prospective buyer(s) would be passed at a later date, it would be impossible to check the same by the regulators. Accounting of the remaining amount of the ITC which has not been allowed earlier to the buyer(s) and if allowed later, will have lot of complications, especially when the same was merged with other projects of the same builder and also with the un-sold area sold after 01.07.2017. Hence, the ITC claimed by the Respondent during a particular period should be allowed to be set-off during the same period irrespective of any discount or down-ward working in the profiteering ratio, as has been done by the DGAP in

his Report with respect to the saleable and un-sold area in Table B of Para 17 (page 7) of the DGAP's Report.

(xxv) That the submission dated April 26, 2019 made by the Respondent at page No. 3 that the benefit of input tax credit shall be passed on to the recipients by way of commensurate reduction in prices is incorrect as no benefit has been passed on by him.

(xxvi) That the Respondent has submitted vide page No. 4, of his submissions the details of the materials purchased by him during the period from July, 2017 to August, 2018 without any appropriate justification and has claimed that ITC benefit could be passed on at the time of completion of the project only, however, the above benefit of ITC has to be passed on to the buyers at the time of demand after commensurate reduction in price fixed prior to 01.07.2017. The logic of payment of Excise Duty from 01.07.2017 was un-warranted as the admissible amount of ITC has already been availed by the Respondent in his GSTR-3B Returns on monthly basis.

(xxvii) That with regard to page No. 5 of the submissions of the Respondent, it is stated that calculations made by DGAP prior to 01.07.2017 and on and after 01.07.2017 were correct. However, the percentage of benefit of ITC would increase after correction of the arithmetical errors, and also by not allowing any reduction of ITC benefit due to un-sold and saleable area.

(xxviii) That the Respondent never had any intention to pass on the benefit of ITC in case he wanted to do so he could have approached the Advance Ruling Authority as provided under Chapter XVII (18) of CGST Act, 2017 to seek clarification for computation of the exempt

ITC as per Section 97 (2) (d) of the above Act which states as under:-

"97. (1) An applicant desirous of obtaining an advance ruling under this Chapter may make an application in such form and manner and accompanied by such fee as may be prescribed, stating the question on which the advance ruling is sought.

97(2) The question on which the advance ruling is sought under this Act, shall be in respect of,—

(a) classification of any goods or services or both;

(b) applicability of a notification issued under the provisions of this Act;

(c) determination of time and value of supply of goods or services or both;

(d) admissibility of input tax credit of tax paid or deemed to have been paid;

(e) determination of the liability to pay tax on any goods or services or both;

(f) whether applicant is required to be registered;

(g) whether any particular thing done by the applicant with respect to any goods

or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term."

(xxix) That as per the submissions made by the Applicants vide submissions dated 12.04.2019-Para-1, it is stated that Table-1 should be replaced by Annexure-1 of his submissions dated 18.06.2019 due to the typographical error.

(xxx) That there were arithmetical errors in Table 'C' of the DGAP's Report. Since, the Respondent has deposited an amount of Rs. 33,625/- only in cash, remaining amount of Rs. 6,64,75,465/ has been paid out of the ITC however, in Table- 'B' of the DGAP's Report, ITC availed has been shown as Rs. 6,22,18,349/-.

(xxxi) That the ratio of ITC to total turnover was 12.00% during the period of investigation prior to 25.01.2018 and afterwards it was 7.992% as against the DGAP's combined ratio of 7.73%. As per the latest amendment, ITC was only allowed for those apartments which were sold after 1st April, 2019 at new GST rate and these flats have been specifically marked, to be sold after receipt of OC. When the above arithmetical errors were corrected as per GSTR-3B Returns, the resultant figures of commensurate demand price and profiteering will also change automatically and higher ITC benefit will be due to be passed on to the customers.

(xxxii) That with regard to para No. 20 of the DGAP's Report, the net amount of excess collection of Demand or the profiteered amount has been calculated as Rs. 5,30,34,074/-which was the net amount without any GST component, as follows:-

As per Table 'F' at page No. 9 of the Report:

Column 6 – Total Basic Demand raised during July, 2017 to August, 2018 =Rs. 66,60,05,750

Column 7 – GST charged @ 12% & 8% =Rs. 6,65,09,090

Total Demand (A) =Rs.73,25,14,840/-

Column 9- Re-calibrated price	=Rs. 61,77,86,934
Column 10-GST @ 12% & 8%	=Rs. 6,16,93,832
Commensurate demand price (B)	=Rs. 67,94,80,766
Profiteered Amount (A)-(B)	=Rs. 5,30,34,074

Therefore, the net profiteered amount was Rs. 5,30,34,074/- which should not include 12% or 8% GST which would further reduce the amount of profiteering. However, above figures were hypothetical since the entire calculations were required to be made afresh in view of the above arithmetical errors Thus, the excess collection of demand or profiteering amount worked out to be Rs. 6,97,98,961/- as per Annexure-1, without giving any consideration of un-sold and saleable area as erroneously calculated by the DGAP.

(xxxiii) That the methodology used for the computation of profiteering employed by the DGAP was different than what has been prescribed in the Statute with regard to saleable and un-sold area as per Section 17 (2) & 17 (3). The DGAP in his Report, in para 16, has mentioned a mechanism for calculating exempt ITC in order to arrive at the percentage of profiteering. The DGAP has relied on clause (b) of Paragraph 5 of Schedule II to arrive at the value of exempt ITC for tax period from 1st July, 2017 to 31 August, 18. However, as per Notification No. 16/2019 Central Tax dated 03.2019 also known as the Central Goods and Service Tax (Second Amendment) Rules, 2019 relating to the machinery provision under Rule 42 and Rule 43 for charging section 17 (2) and Sec 17 (3) should be applied

retrospectively in this case and the profiteering amount should be re-computed on the basis of the latest amendment, since the amendment provided clarity which was lacking in the statute. The following Explanations were added to Rule 42 & 43 retrospectively which clarified the method of calculating exempt ITC:-

In Rule 42 (1) (f):

"Explanation: For the purpose of this clause, it is hereby clarified that in case of supply of services covered by clause (b) of paragraph 5 of Schedule II of the said Act, value of T4 shall be zero during the construction phase because inputs and input services will be commonly used for construction of apartments booked on or before the date of issuance of completion certificate or first occupation of the project, whichever is earlier, and those which are not booked by the said date."

In Rule 43 (1) (b):

"*Explanation:* For the purpose of this clause, it is hereby clarified that in case of supply of services covered by clause (b) of paragraph 5 of the Schedule II of the said Act, the amount of input tax in respect of capital goods used or intended to be used exclusively for effecting supplies other than exempted supplies but including zero rated supplies, shall be zero during the construction phase because capital goods will be commonly used for construction of apartments booked on or before the date of issuance of completion certificate or first

occupation of the project, whichever is earlier, and those which are not booked by the said date.";

(xxxiv) That the above amendments seek to add explanation under machinery provisions under Rule 42 (1) (f) and Rule 43 (1) (b). The above explanations were declaratory in nature and clarified the method of calculation of exempt ITC. These clarification were earlier missing in the provisions hence the calculation of exempt ITC was not in line with the intent of the statute. The above clarifications have been able to remove the anomaly which was present in the statute and it was mentioned that they were clarificatory in nature hence they should be applied retrospectively.

(xxxv) The above Applicants have also relied upon the **Principles of Statutory Interpretation provided by Justice G. P. Singh** which while dealing with the operation of the fiscal statutes elaborate the principles of statutory interpretation in the following words:-

"Fiscal legislation imposing liability is generally governed by the normal presumption that it is not retrospective and it is a cardinal principle of the tax law that the law to be applied is that in force in the assessment year unless otherwise provided expressly or by necessary implication. The above rule applies to the charging section and other substantive provisions such as a provision imposing penalty and does not apply to machinery or procedural provisions of a taxing Act which are generally retrospective and apply even to pending proceedings."

(xxxvi) The above Applicants have also cited the case of **Keshavlal Jethalal Shah v. Mohanlal Bhagwandas** in which the Honourable Supreme court has held that in case if the amendment sought to explain the pre existing legislation which was ambiguous and defective then such provision needed to be applied retrospectively. He has further cited the case of **Commissioner of Income Tax V. Gold Coin Health Food Private Limited** in which it was held that:-

"The presumption against retrospective operation is not applicable to declaratory statutes.... In determining, therefore, the nature of the Act, regard must be had to the substance rather than to the form. If a new Act is "to explain" an earlier Act, it would be without object unless construed retrospectively. An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act. It is well settled that if a statute is curative or merely declaratory of the previous law retrospective operation is generally intended.... An amending Act may be purely declaratory to clear a meaning of a provision of the principal Act which was already implicit. A clarificatory amendment of this nature will have retrospective effect (ibid., pp. 468-69)".

(xxxvii) Therefore, the amendments made in Rule 42 (1) (f) and Rule 43 (1) (b) relating to the clarity on the computation of exempt ITC were very specific to the Construction Supplies which were earlier absent in the statute. Hence, in the above Rules when these specific

provisions were added for the purpose of computation of the exempt ITC instead of relying on the general interpretations, these specific interpretation should be applied. The above Applicants have also placed reliance on the case of **Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd. 1987 SCR (2) 1** in which the Hon'ble Supreme Court has held as under:-

"Further it is a settled legal position in law, that is, if in a Statutory Rule or Statutory Notification, there are two expressions used, one in General Terms and the other in special words, under the rules of interpretation, it has to be understood that the special words were not meant to be included in the general expression. Alternatively, it can be said that where a Statute contains both a General Provision as well as specific provision, the latter must prevail. The Court *should examine every word of a statute in its context and must use context in its widest sense. [paras 27, 28] [21-D-F]"*

(xxxviii) The above Applicants have also claimed that similar interpretations were provided in the following judgements:-

1. **Commercial Tax Officer, Rajasthan v. M/S Binani Cement Ltd. & another (Civil Appeal No. 336 of 2003).**
2. **LIC v. D. J. Bahadur (1981) 1 SCC 315 : 1981 (1) SCR 1083.**
3. **Gobind Sugar Mills Ltd. v. State of Bihar (1999) 7 SCC 76.**

(xxxix) That even if the above amendments were applied retrospectively, there would be no incremental liability on the Respondent and he would not be required to reverse ITC though the language of the above provisions suggested otherwise.

(xl) That the Construction Supply was very different from the Supply of Goods or Supply of Services. In case of Construction Supply the transaction of sale was spread over a period of time which covered multiple assessment tax period. Further the cost and the revenue was misaligned which led to the anomaly in calculation of exempt ITC at a particular point of time. Further for each tax period, builder was not required to reverse the ITC pertaining to unsold inventory and had the right to avail the available ITC. Hence, in order to calculate correct profiteering, the above amendments should be taken into consideration.

13. The above submissions of the Respondent and the above Applicants were sent to the DGAP for filing Reports which have been submitted by him vide his supplementary Reports dated 23.05.2019 and 23.10.2019 in which it has been stated that the Respondent has contended that improper consideration of the provisions of Section 171 of CGST Act, 2017, had been given in the investigation Report submitted by the DGAP and he has offered his own explanation and understanding of the same, however, the Respondent has agreed that as per the Section 171 (2), if there was any additional/extra benefit of ITC available under the GST regime which was not available earlier, then that benefit of ITC has to be passed on to his

customers by way of reduction in prices. The DGAP has also stated that the Respondent has also claimed that under the erstwhile regime, vide Notification No. 09/2016 dated 01.03.2016, construction of residential complex under the affordable housing was exempted from Service Tax liability, and accordingly CENVAT credit for input services was no more available to him and under the Haryana VAT Act, 2003, the Respondent had opted for the regular scheme to discharge VAT liabilities on transfer of goods during the execution of construction activities and hence VAT input credit was allowed to him. The DGAP has further stated that the Respondent was of the opinion that only the credit of Excise Duty paid on materials was not allowed to him as CENVAT credit and was cost to him in the erstwhile regime which was the only component, ITC of which was available to him in the GST regime which the Respondent has agreed to pass on to his customers subject to the adjustment of any ITC which would be cost to him at the time of completion of the project as the Respondent could not claim refund of the excess amount of ITC after completion of the project in light of the Notification No. 15/2017 Central Tax (Rate) dated 27.06.2017. The DGAP has also submitted that based on the above mentioned notifications, the Respondent has worked out that actual benefit of Excise Duty amounted to Rs. 3,04,63,210/- which pertained to both the sold and unsold units calculated on the basis of basic purchase price of materials purchased during the period from July, 2017 to March, 2019 on which Excise Duty was applicable in the erstwhile regime but no credit for the same was available to the Respondent.

14. The DGAP has also submitted that the point raised by the Respondent regarding the additional ITC on account of Central Excise Duty has been addressed in para 15 of his Report dated 28.02.2019 submitted by him. He has further submitted that it was a fact that in the pre-GST period Central Excise Duty component on the inputs purchased by the Respondent was a cost to the Respondent, as it was built in the cost of purchases made but credit for the same was not available in terms of CENVAT Credit Rules, 2004 and with the implementation of GST, Central Excise Duty has been subsumed within GST and credit for the same was available to Respondent, which was additional benefit of ITC available to him. The DGAP has also claimed that the Respondent's claim regarding Service Tax exemption in his case was a fact as he was neither charging any Service Tax from his home-buyers nor was he liable to pay any Service Tax on the input services received as supply of services by his down line contractors/sub-contractors to the Respondent too was exempted, thus, there was no implication of Service Tax component on his cost. The DGAP has further claimed that however, under the GST, there was no such exemption and the Respondent has to pay GST on the input services received and credit for the same could also be availed by them. He has also contended that in the light of this new component of GST liability on input services received and availability of its credit, the methodology adopted by the Respondent may be one of the ways to determine the quantum of additional benefit of ITC available on implementation of GST, however, he has stated that he had not looked into these aspects of costing during the

course of investigation of profiteering. However, in para 17 of the Investigation Report dated 28.02.2019 the methodology adopted by the DGAP to arrive at the additional benefit of ITC in the post-GST period has been mentined in detail. In this regard he has further contended the extent of profiteering was arrived at, on case to case basis, by adopting suitable method based on the facts and circumstances of each case as well as the nature of the goods or services supplied and there could not be any fixed methodology for determination of the quantum of benefit to be passed on and in this case, for calculation of profiteering, the increase in the ITC as a percentage of the turnover has been taken. The DGAP has also admitted that as per the methodology followed by him for determination of profiteering, the ratio of Input tax ratio percentage with the Respondent's turnover from the homebuyers for the pre-GST period (April, 2016 to June, 2017) with the relevant period post GST (July, 2017 August, 2018) has been compared and the Respondent's claim regarding exemption and non-applicability of the Service Tax for affordable housing and availability of VAT credit as he had opted regular scheme under the HVAT Act, 2003 has been accepted.

15. The DGAP has also intimated that the Respondent has stated that "Here the company is ready to pay excise duty amount net of ITC which to be cost to the company as a benefit of input tax credit and final route of benefit of input tax credit to be calculated at the time of completion of project only." He has further intimated that the Respondent has requested for approval to pay the profiteered amount.

16. The DGAP has also argued that as regards the Respondent's submission that he has not considered/reduced that ITC which would be cost to the Respondent at the time of completion of the project in the calculation of Excise Duty component and the above figure as claimed was for the period from July, 2017 to March, 2019 and computation of profiteering has been done for the period from July, 2017 to August, 2018 by the DGAP, and dealt in para 8 and para 25 of the DGAP's Investigation Report dated 28.02.2019. Para 25 of the Report has been reproduced below:-

"As aforementioned, the present investigation covers the period from 01.07.2017 to 31.08.2018 Profiteering. If any for the period post August, 2018 has not been examined as the exact quantum of input tax credit that will be available to the Respondent in future, cannot be determined at this stage when the construction of the project is yet to be completed."

17. The DGAP has also contended that the Respondent has submitted that subject to approval of his request of the aforesaid amount as calculated by him, he would pass on this benefit to its customers and the Respondent has admitted to profiteering and provided details of the amount along with the basis of quantification based on his understanding, which may be considered by the Authority.

18. We have carefully considered the Report of the DGAP, submissions made by the Respondent and based on the record it is revealed that the above Applicants had purchased flats from the Respondent in his "Green Court" project situated in Sector 90, Gurugram, Haryana which was got approved by him under the Affordable Housing Policy-

2013 of the Government of Haryana. The above Applicants have complained to the Haryana State Screening Committee under Rule 128 (2) of the CGST Rules that the Respondent has not granted them the benefit of ITC which he has obtained after coming in to force of the CGST Act, 2017 by commensurate reduction in the price of the flats and was also charging VAT from them @12%. The above Committee has forwarded their complaints to the Standing Committee which has sent their applications to the DGAP for detailed investigation under Rule 129 (1) of the above Rules. The DGAP after investigation has furnished the present Report dated 28.02.2019 to this Authority under Rule 129 (6) of the CGST Rules, 2017 stating that the Respondent has not passed on the benefit of additional ITC to his flat buyers including the above Applicants and has violated the provisions of Section 171 of the CGST Act, 2017 by profiteering an amount of Rs. 5,30,34,074/- which was required to be passed on to them as per the details given in Annexure-25 of his Report. After carefully considering the above Report and the supplementary Reports filed by the DGAP and the submissions made by the Respondent and the Applicant we find that the following issues need to be addressed in the present case:-

a. Whether there was reduction in the rate of tax on the construction service rendered by the Respondent to the Applicants w.e.f. 01.07.2017?

b. Whether there was any additional benefit of ITC to the Respondent which was required to be passed on by him to his buyers?

c. Whether there was any violation of the provisions of Section 171 of the CGST Act, 2017 committed by the Respondent by not passing on the above benefit?

19. It is also revealed from the record that the Respondent has admitted in his submissions that he was entitled to CENVAT Credit under the Service Tax law and the ITC under the Haryana Value Added Tax Act, 2003 and the Service Tax was exempted later on through Notification No. 09/2016 –Service Tax dated 01.03.2016 in the case of Affordable Housing Schemes and he was not charging Service Tax from his customers whereas he was availing ITC on VAT under the regular scheme to discharge his VAT liability. He has also admitted that he was not allowed CENVAT Credit of Excise Duty which he was paying and hence, this Duty was cost to him before, however, after coming in to force of the GST he had become eligible to claim benefit of ITC on it which he was ready to pass on to his customers subject to the adjustment of ITC which would be cost to him at the time of completion of the project. However, the above contention of the Respondent related to the adjustment of the ITC at the time of handing over of the possession is not correct as he is not required to pay more than what he has got as benefit to ITC to his customers as per the provisions of Section 171 of the above Act and hence, he can not retain any amount of ITC on the ground that it would be adjusted at the time of handing over the possession.

20. The Respondent has also claimed that he has worked out additional benefit of Excise Duty which came to Rs. 3,04,63,210/- after coming

in to force of the GST without adjusting the amount of ITC which would be cost to him at the time of handing over the possession. However, it is apparent from the supplementary Report dated 23.11.2019 of the DGAP that the profiteered amount has not been worked out by him on the basis of the cost of the material and it is based on the comparison of the ratio of the CENVAT credit to the turnover obtained by the Respondent during the period from April, 2016 to June, 2017 and the benefit of ITC to the turnover which had been realised by him between the period of July, 2017 to August, 2018 and accordingly, he has computed profiteering of Rs. 5,30,34,074/-. The mathematical methodology adopted by the DGAP while calculating the profiteered amount as per Table C and D of his Report is more rational and appropriate keeping in view the provisions of Section 171 of the above Act and hence the methodology adopted by the Respondent in this regard cannot be accepted as it is not based on correct interpretation of the above provision as the details of the material purchased by him do not appear to be correct.

21. The Respondent has further claimed that keeping in view the taxes which were being imposed by the Central and the State Govt. before the GST, he was not getting benefit of Excise Duty therefore, 50% of the Excise Duty amount of Rs. 1,52,31,605/- out of total amount of Rs. 3,04,63,210/- was payable to the customers as benefit of GST which he was willing to pay. As has been discussed in para supra the profiteered amount has been calculated by the Respondent on the basis of the cost which has not been verified either by the DGAP nor

correct methodology has been applied by the Respondent while calculating it and hence the same cannot be accepted. There is also no rationale in the contention of the Respondent that he was willing to pass on 50% amount of the Excise Duty as benefit as he is required to pass on the entire amount of additional benefit of ITC which he has availed post-GST.

22. The Respondent has also contended that as per the Notification No. 15/2017- Central Tax(Rate) dated 27.06.2017 there would be no refund of the unutilized ITC available to him at the time of completion of the project. The above provision is correct as the Respondent cannot get it refunded at the time of completion of the project and it is required to be reversed as per clause (b) of Schedule-II of the CGST Act, 2017 as he would not have passed its benefit as the flats had remained unsold.

23. The Applicants No. 1 to 12 have stated in their submissions that the amount of profiteering should be ordered to be passed on to them alongwith interest @ 18% p.a., as an interim relief. However, there is no provision of granting interim relief in the CGST Act, 2017 and hence their contention cannot be accepted.

24. The above Applicants have also stated that the Respondent has deposited total amount of Rs. 33,625/- only in cash and the remaining amount of output liability has been met by him from the ITC. They have also computed the amount of ITC as Rs. 6,64,75,465/- which has been paid by him from the ITC and also computed the profiteered amount as Rs. 6,97,98,961/- as against the total profiteering of Rs. 5,30,34,074/- calculated as per Table 'C' of

the DGAP's Report dated 28.02.2019. The above figure of Rs. 6,64,75,465/- cannot be taken in to account for computing the benefit of ITC as only the ITC relevant to the sold area amounting to Rs. 5,14,90,200/- is to be considered as no benefit is required to be passed in respect of the unsold area. Hence, the above contention of the Applicants is incorrect.

25. The Applicants have further stated that no discount was required to be given on account of the sold and unsold area as has been given in Table B of the Report. The above claim of the Applicants is not justified as the benefit has to be passed on only to those buyers who have purchased the flats during the pre-GST period and who have made payments during the post-GST period as their entitlement would have to be computed proportionate to the amount paid by them post-GST which would vary as per the area purchased by them. Hence, it is essential to consider the sold and the unsold area.

26. The above Applicants have also contended that the entire saleable area was not to be sold at the same rates as the rates were different for the area of the flats and the balconies. However, since, the ITC benefit has to be passed on proportionate to the amount paid by a buyer in the post-GST period hence, the above different selling prices do not affect the computation of the benefit.

27. The Applicants have further contended that there has been several cancellations of the booked amounts and hence the buyers of these flats should either be paid the benefit of ITC or the amount of GST should be refunded. Since, the above issue is governed by the provisions of the agreement executed between the buyers and the

Respondent and does not fall within the preview of Section 171 no decision can be given on it by this Authority.

28. Since, all the complaints who wanted to join the present proceedings have been allowed to do so by this Authority their grievance has been settled.

29. The Applicants have also argued that in para 17 of the DGAP's Report dated 28.02.2019 it has been stated that the Respondent has wrongly availed credit of Service Tax which may be reported to the appropriate authority for necessary action. The above claim of the Applicants does not fall within the provisions of Section 171 and hence no direction can be given on the same.

30. The Applicants have further argued that in per para 17 of the DGAP's Report dated 28.02.2019 it has been mentioned that the Respondent has not mentioned any turnover in his VAT Returns or ST-3 Returns on account of exemption prior to 01.07.2017, therefore, due to the above non-compliance benefit of ITC @ 0.49% for the pre-GST period should not be allowed to the Respondent. Perusal of para 17 shows that no such claim has been made by the DGAP in this para, hence, the above contention is wrong.

31. The above Applicants have also pleaded that Respondent has not issued tax invoices to them in the prescribed format as per the CGST Act, 2017 and hence action should be taken against him. In this connection the Applicants are themselves competent to lodge complaint against the Respondent before the appropriate tax authority and hence no action is required to be taken by this Authority.

32. The Applicants have further pleaded that letter dated 20.02.2019, written by the Respondent to the DGAP stated that the VAT was going to be recovered from the customers at the time of possession of the flats therefore, the SGST amount could not be considered as benefit to be passed on to the customers under Section 171 of the CGST Act, 2017. In this connection it would be relevant to mention that payment of taxes is governed by the agreement executed between the Respondent and the Applicants and hence no ruling can be given by this Authority on this issue.

33. The Applicants have also claimed that since the entire data has not been furnished by the Respondent they were not able to raise objections. In this connection it would be relevant to mention that all the information required by the Applicants has been duly provided to them and has also been inspected by them in the office of the DGAP and hence the above argument of the Applicants is not tenable.

34. That the Applicants have further claimed that with effect from 25.01.2018, the Govt. has clarified that the Respondent was not required to pay GST in cash but would have enough ITC to pay the output GST and hence, he should not recover GST from the buyers. However, the Respondent has charged GST @ 12% and 8% forcibly from the Applicants. The DGAP has confirmed vide his Report dated 28.02.2019 that the Respondent has not passed on the benefit of additional ITC through commensurate reduction in the price and has also charged GST on the pre-GST and hence the above allegation of the Applicants is correct.

35. The Applicants have also averred that the DGAP has not correctly applied the provisions of Section 17 (2) and 17 (3) as they should be applied alongwith Rule 42 read with Section 2 (106) with reference to the "Tax Period". The above contention of the Applicants is not correct as the provisions of Rule 42 provide the "Manner of determination of ITC in respect of input or input services and reversal therefore. Since, the Respondent has not obtained the OC yet hence no reversal of ITC is required to be computed at this stage and hence, the provisions of the above Rule to that extent cannot be applied. However, the provisions of Section 17 (2) and 17 (3) are very much relevant as they provide the manner of "apportionment of credit and blocked credit" as per the nature of the supplies and their value subject to the provisions of clause (b) of para 5 of Schedule-II of the CGST Act, 2017.

36. The above Applicants have also intimated that since the Respondent has been allowed to set off his output tax liability against the ITC the same should be allowed as benefit of ITC during that particular period / month only. They have further intimated that in case this method was adopted then the proportionate ITC on unsold flats would be required to be reversed in each tax period and thus, the entire amount of GST collected from the customers in proportion to unsold flats, would be required to be deposited with the revenue authorities during the respective month in cash. The above contention of the Applicants is incorrect as there is no question of depositing of the GST which has been paid by the other buyers against the unsold flats as in such a situation they would have to pay

more GST than what they are required to pay which would be against the provisions of the above Act. There is also no question of depositing of deferred amount of ITC for allowing the benefit to the prospective buyers on monthly basis in cash as in case it is deposited the Respondent cannot re-caliberate his prices to pass on the benefit of ITC to such buyers. There is also no issue of adequate oversight by the tax authorities on such ITC as it would be reflected in the Retunes and would be liable to be scrutinized at the time of assessment.

37. The above Applicants have also alleged that details of the materials purchased by the Respondent during the period from July, 2017 to August, 2018 were without any appropriate justification and passing of the benefit at the time of completion of the project was not correct. AS has been discussed supra the computation of the benefit of ITC on the basis of the purchases made by the Respondent has already been held to be incorrect. Moreover, the above benefit cannot be passed on by the Respondent at the time of the completion of the project in view of the fact that the Respondent cannot apply different yardsticks while availing the above benefit every month and passing on the same after a lapse of a period of more than 3 years. The Respondent cannot enrich himself at the expense of the vulnerable segment of flat buyers who have been given the above benefit by the Central as well as the State Govt. out of their own tax revenue so that accommodation can be provided to the flat buyers at the affordable prices. In case the Respondent proposes to pass on the

benefit at the time of completion of the project he should also avail the ITC at the time of completion of the project.

38. The above Applicants have also admitted that calculations made by DGAP prior to 01.07.2017 after 01.07.2017 were correct, however, the percentage of benefit of ITC would increase after correction of the arithmetical errors and also by not allowing any reduction of ITC benefit due to un-sold and saleable area. The above contention is wrong to the extent that the benefit of ITC cannot be computed without takin in to account the above areas as no benefit is required to be passed in respect of the unsold area.

39. The Applicants have also contended that the Respondent should have approached the Advance Ruling Authority as provided under Chapter XVII (18) of CGST Act, 2017 to seek clarification for computation of the exempt ITC, as per Section 97 (2) (d) of the above Act. The above plea of the Applicants is correct.

40. The above Applicants have further contended that as per the submissions made by them on 12.04.2019, Table-1 should be replaced by Annexure-1 attached with their submissions filed on 18.06.2019 due to the typographical error. The above claim of the Respondents is untenable since the profiteered amount in both the above documents is same which has already been held to be incorrect as has been discussed above.

41. The above Applicants have also stated that there were arithmetical errors in Table 'C' of the DGAP's Report. Since, the Respondent has deposited an amount of Rs. 33,625/- only in cash, remaining amount of Rs. 6,64,75,465/ has been paid out of the ITC however, in Table-

'B' of the DGAP's Report, ITC availed has been shown as Rs. 6,22,18,349/-. The DGAP has taken the above figure of ITC as per the Returns filed by the Respondent therefore, the above claim of the Applicants is not correct. The manner of calculation of the ITC by the Applicants is also incorrect as the same cannot be computed by subtracting the amount of ITC paid in cash as it is be calculated on the basis of the GSTR-3B Returns.

42. The above Applicants have also submitted that in para 20 of the DGAP's Report, the net amount of excess collection of Demand or the profiteered amount has been calculated as Rs. 5,30,34,074/- which was the net amount without any GST component and hence the profiteered amount should not be reduced. However, perusal of para 20 shows that the DGAP has computed the profiteered amount as Rs. 4,82,18,816/- without GST and Rs. 5,30,34,074/- with GST which is based on the Returns filed of ITC and turnover filed by the Respondent and hence the above contention of the Applicants cannot be accepted.

43. The Applicants have also contended that the methodology used for the computation of profiteering was different than what has been prescribed in Section 17 (2) & 17 (3) and hence the methodology as per the Notification No. 16/2019 (Central Tax) dated 29.03.2019 relating to the machinery provisions under Rule 42 (1) (f) and Rule 43 (1) (b) should be applied retrospectively as they were declaratory in nature, in this case and the profiteering amount should be re-computed. In this connection it would be relevant to mention that there is no provision in the CGST Act, 2017 or in the above

Notification to apply the above provisions retrospectively and hence the same cannot be applied retrospectively.

44. The above Applicants have also relied upon the **Principles of Statutory Interpretation provided by Justice G. P. Singh,** the cases of **Keshavlal Jethalal Shah v. Mohanlal Bhagwandas, Commissioner of Income Tax v. Gold Coin Health Food Private Limited, Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd. 1987 SCR (2) 1, Commercial Tax Officer Rajasthan v. M/S Binani Cement Ltd. & another (Civil Appeal No. 336 of 2003), LIC v. D. J. Bahadur (1981) 1 SCC 315 : 1981 (1) SCR 1083** and **Govind Sugar Mills Ltd. v. Sate of Bihar (1999) 7 SCC 76** in their support. Perusal of the **Principles of Statutory Interpretation provided by Justice G. P. Singh** shows that they do not apply in the facts of the present case as there is no provision in the above Act or the Rules to apply the above mentioned amendments made in Rule 42 or 43 of the above Rules retrospectively. They are further not required to be applied retrospectively as the OC has not been obtained in the present case and hence, the issue of reversal of ITC has not arisen. The case of **Keshavlal Jethalal Shah v. Mohanlal Bhagwandas AIR 1968 1336** pertains to the interpretation of Section 29 (2) of the Bombay Rents, Hotels & Lodging Houses Rates Control Act, 1947. Since, the facts of the above case are different than the present case and therefore, it is respectfully submitted that the above case does not help the Applicants. The case of **Commissioner of Income Tax v. Gold Coin Health Food Private Limited** also does not help the Applicants

as no clarificatory amendment has been made in the CGST Act, 2017 with the intention of implementing it retrospectively. In the case of **Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd. 1987 SCR (2) 1,** interpretation of the definition of "Price Chit" was involved under the Prize Chits and Money Circulation Scheme (Banning) Act, 1978. Since no interpretation of the definition of Rules 42 and 43 is involved in the facts of the present case hence the law settled in the above case is not being followed. In the case of **Commercial Tax Officer Rajasthan v. M/S Binani Cement Ltd. & another (Civil Appeal No. 336 of 2003)** issue involved was interpretation of the "Sales Tax New Incentive Scheme for Industries 1989" and the facts of the above case are not similar to the facts of the present case and hence, the above case cannot help the cause of the Applicants. In the case of **LIC v. D. J. Bahadur (1981) 1 SCC 315 : 1981 (1) SCR 1083** it was required to be decided whether the provisions of LIC Act, 1956 would apply in respect of the employees of the LIC or the provisions of Industrial Disputes Act, 1947 would apply. In this case the same issue is not involved and hence the above judgement is not relevant in the present case. The case of **Govind Sugar Mills Ltd. v. State of Bihar (1999) 7 SCC 76** pertains to the charging of purchase tax on Sugar under the Bihar Finance Act, 1981 and the Bihar Sugarcane (Regulation of Price, Supply & Purchase) Act, 1981 whereas in this case there is no issue of application of two Acts and hence the law settled in the above case is of no assistance to the above Applicants.

45. It is also clear from the perusal of Table B supra that the ITC as a percentage of the total turnover that was available to the Respondent during the pre-GST period from April, 2016 to June, 2017 was 0.49% and during the post-GST period from July, 2017 to August, 2018, it was 7.73% which establishes that post-GST, the Respondent has benefited from the additional ITC to the extent of 7.24% [7.73% (-) 0.49%] of the turnover.

46. It is also apparent from the record that the Central Government on the recommendation of the GST Council had levied 18% GST with effective rate of 12% in view of 1/3rd abatement on value, on the construction service, vide Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017. The effective GST rate on construction service in respect of affordable and low-cost housing was further reduced from 12% to 8%, vide Notification No. 1/2018-Central Tax (Rate) dated 25.01.2018. In view of the change in the GST rate after 01.07.2017, the profiteering has been computed by the DGAP in two parts by comparing the applicable tax rate and the availability of ITC during the pre-GST period from April, 2016 to June, 2017 when only VAT was payable with (1) the post-GST period from July, 2017 to 24.01.2018 when the effective GST rate was 12% and (2) with the GST period from 25.01.2018 to 31.08.2018 when the effective GST rate was 8%. On the basis of the comparative figures of tax rate, ratio of ITC to the Respondent's turnover in the pre-GST period and the post-GST period, the recalibrated basic price on account of benefit of additional ITC and the excess collection by the Respondent viz. profiteering has been calculated by the DGAP as per the above

Table. Since, the DGAP has prepared the above Table as per the Returns filed by the Respondent during the pre-GST and the post-GST and also as per the information supplied by the Respondent himself therefore, the above ratios calculated by the DGAP can be considered to be correct.

47. It is further apparent from Table C supra that the additional ITC of 7.24% of the turnover, should have resulted in commensurate reduction in the base price as well as the cum-tax-price to be charged by the Respondent. Accordingly, as per the provisions of Section 171 of the Central Goods and Services Tax Act, 2017, the benefit of the additional ITC which has accrued to the Respondent in the post-GST period is required to be passed on to the above Applicants as well as the other home buyers. Based on the amount collected by the Respondent from the above Applicants and the other home buyers during the period from 01.07.2017 to 24.01.2018, the amount of benefit of ITC which is required to be passed on by the Respondents to the recipients or in other words, the profiteered amount comes to ₹ 2,68,17,079 /- which includes 12% GST on the base profiteered amount of ₹ 2,39,43,820 /-. Further, the amount of benefit of ITC which needs to be passed on by the Respondent to the recipients or the profiteered amount during the period from 25.01.2018 to 31.08.2018, comes to ₹ 2,62,16,996/- which includes 8% GST on the base profiteered amount of ₹ 2,42,74,996/. Accordingly, the total profiteered amount during the period from 01.07.2017 to 31.08.2018 comes to ₹ **5,30,34,074 /-** which includes GST @12% or 8% on the base profiteered amount of **₹ 4,82,18,816/-**

which is required to be passed on as per the home buyer and unit no. wise break-up of the amount which has been given by the DGAP in Annexure-25. Since the above computation has been made by the DGAP on the basis of the Returns filed by the Respondent as well as the information supplied by him which has been duly verified by the DGAP hence the above computation of the profiteered amount is taken to be correct. Accordingly, this Authority determines the profiteered amount as Rs. 5,30,34,074/- which includes GST @12% or 8% on the base profiteered amount of ₹ 4,82,18,816/- for the period w.e.f. 01.07.2017 to 31.08.2018 as per the provisions of Rule 133 (1) of the CGST Rules, 2017.

48. It is established from the perusal of the above facts of the case that the provisions of Section 171 of the CGST Act, 2017 have been contravened by the Respondents as he has profiteered an amount of Rs. 5,30,34,074/- which includes both the profiteered amount @ 7.24% of the base price and the GST on the said profiteered amount from other recipients as well who are not Applicants in the present proceedings. Accordingly, the above amount shall be paid to the Applicants No. 1 to 12 and the other eligible house buyers by the Respondents along with interest @18% from the date from which these amounts were realised from them till they are paid as per the provisions of Rule 133 (3) (b) of the CGST Rules, 2017 within a period of 3 months from the date of issue of this Order, failing which the same shall be recovered by the concerned Commissioner CGST / SGST and paid to the eligible house buyers.

49. From the above discussions it is clear that the Respondent has profiteered by an amount of Rs. 5,30,34,074/- for the period under investigation. Therefore, this Authority under Rule 133 (3) (a) of the CGST Rules, 2017 orders that the Respondent shall reduce/refund the price to be realized from the buyers of the flats commensurate with the benefit of ITC received by him as has been detailed above. The present investigation is only up to 30.08.2018 therefore, any additional benefit of ITC which shall accrue subsequently to the Respondent shall also be passed on to the buyers by the Respondent. In case this additional benefit is not passed on to the Applicant No. 1 to 12 or any other buyer they shall be at liberty to approach the State Screening Committee Haryana for initiating fresh proceedings under Section 171 of the above Act against the Respondent. The concerned CGST or SGST Commissioner shall take necessary action to ensure that the benefit of additional ITC is passed on to the eligible house buyers in future.

50. It is evident from the above that the Respondent has denied the benefit of ITC to the buyers of the flats being constructed by him in contravention of the provisions of Section 171(1) of the CGST Act, 2017 and has thus committed an offence as per the provisions of Section 171 (3A) of the above Act. Therefore, he is liable for imposition of penalty under Section 171 (3A) of the CGST Act, 2017. Accordingly, a Show Cause Notice be issued to him directing him to explain why the penalty prescribed under the above provision should not be imposed on him. Accordingly, the notice dated 05.03.2019 vide which it was proposed to impose penalty on the Respondent as

per the provisions of Section 29, 122-127 of the CGST Act, 2017 read with Rule 21 and 133 of the CGST Rules, is withdrawn to that extent.

51. Further this Authority as per Rule 136 of the CGST Rules 2017 directs the Commissioners of CGST/SGST Haryana to monitor this order under the supervision of the DGAP by ensuring that the amount profiteered by the Respondent as ordered by the Authority is passed on to all the eligible buyers. A report in compliance of this order shall be submitted to this Authority by the DGAP within a period of 4 months from the date of receipt of this order.

52. A copy each of this order be supplied to the Applicants, the Respondent, Commissioners CGST /SGST as well as Principal Secretary (Town & Planning) Government of Haryana for necessary action. File be consigned after completion.

Sd/-
(B. N. Sharma)
Chairman

Sd/-	Sd/-	Sd/-
(J. C. Chauhan)	(R. Bhagyadevi)	(Amand Shah)
Member(Technical)	Member(Technical)	Member(Technical)

Certified Copy

(A. K. Goel)
NAA, Secretary

F. No. 22011/NAA/11/Aster/2019 Date: 19.11.2019

Copy To:-

1. Shri Saurabh Prabhakar, 400, 2nd Floor, Street no. 22, Sector-22A, Gurgaon- 122017, Haryana.

2. Shri Vijai Pratap, 244/1, Adarsh Nagar, New Railway Road, Gurugram-122001, Haryana.
3. Shri Ashok Kumar Pawar, SMO No. 142/2, 54, Air Force Station, Near Atul Kataria Chowk, Gurgaon, Haryana- 122005.
4. Smt. Sangeeta Ahlawat, 1593, Ke Opposite Side, Sector- 45, Gurgaon.
5. Shri Rakesh Kumar Arora, H. No. 1593, Sec. 13, HUDA, Bhiwani, Haryana-127021.
6. Shri Sahil Mehta, 1614-A, Mehta Nagar, Hissar, Haryana- 125001.
7. Smt. Shikha Arora, 1374, Sec-04,Urban Estate, Gurgaon- 122001.
8. Smt. Shelly Chauhan shellychauhan16@gmail.com.
9. Ms. Richa, C/o Shri Anil Kumar Khetan, Rudra Colony, Tosham Colony, Tosham Road, Biwani-127021.
10. Sh. Mahesh Kumar, Flat no.-255, PKT.-7,sector-12, Dwarka, New Delhi-110078.
11. Shri Manish Malik, 218/29, Ram Gopal Colony, Rohtak, Haryana-124001.
12. Sh. Mahesh Jamnadas Dayal Ji Harkhani, S/o Sh. Jamnadas Dayal Ji Harkhani, No. 81, 1st Main Road, 1st Floor, Nagappa Reddy Layout, Kaggadasapura, C.V. Raman Nagar, Banglore, Karnataka-560093.
13. The Commissioner of State Tax, Vanijya Bhavan, Plot No. 1-3, Sector-5, Panchkula, Haryana- 134151.
14. The Commissioner, CGST Gurugram, Plot no. 36 & 37, Sector-32, Gurugram, Haryana-122001.
15. Principal Secretary to Govt. of Haryana, Town & Country Planning Department, Plot No. 3, Sec-18A, Madhya Marg, Chandigarh-160018.
16. Director General Anti-Profiteering, Central Board of Indirect Taxes & Customs, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.
17. Guard File./M/s Aster Infrahome Pvt Ltd., 21-22, Vipul Agora Complex, Gurugram-121002