

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

Case No.	62/2019
Date of Institution	30.05.2019
Date of Order	27.11.2019

In the matter of:

1. Sh. Rohit Singh, Flat No.6B, Tower No. 16, Gulmohar Green, Plot No. 95, Loni Road, Oppo Hindon Airbase, Mohan Nagar, Ghaziabad-201201.
2. Director General of Anti-Profiteering, Central Board of Indirect Taxes & Customs, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.

Applicants

Versus

M/s Friends Land Developers, 17 Kiran Enclave, Near Hotel Samrat,
G.T. Road, Ghaziabad, Uttar Pradesh-201001.

Respondent

27/11

Quorum:-

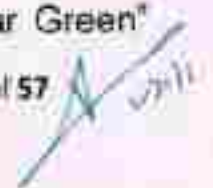
1. Sh. B. N. Sharma, Chairman
2. Sh. J. C. Chauhan, Technical Member
3. Ms. R. Bhagyadevi, Technical Member
4. Sh. Amand Shah, Technical Member

Present:-

1. Sh. A.B. Singh, Authorised Representative for the Applicant No. 1.
2. Smt. Gayatri, Deputy Commissioner for the Applicant No. 2.
3. Sh. B.K. Bansal, Advocate, Sh. Sharan Bansal, Advocate, Sh. Piyush Makkar, CA and Sh. Raghav Singhal, Advocate for the Respondent.

ORDER

1. This Report dated 03.04.2019 and the supplementary Report dated 30.05.2019 has been received from the Applicant No. 2 i.e. the Director General of Anti-Profiteering (DGAP) after detailed investigation under Rule 129 (6) of the Central Goods & Service Tax (CGST) Rules, 2017. The brief facts of the case are that vide his application dated 06.04.2018 submitted to the Uttar Pradesh State Screening Committee on Anti-profiteering under Rule 128 (2) of the CGST Rules, 2017, the Applicant No. 1 had alleged profiteering by the Respondent while he had purchased Flat no. 6B, Tower No. 16, in the Respondent's project "Palm Wood Royal Gulmohar Green"



situated at Plot No. 95, Loni Road, Opp. Hindon Airbase, Mohan Nagar, Ghaziabad-201201. The above Applicant had also alleged that the Respondent had not passed on the benefit of Input Tax Credit (ITC) although he had charged GST @ 12% w.e.f. 01.07.2017 from him. The above Committee had examined the application and after its prima facie satisfaction that the Respondent had violated the provisions of Section 171 of the CGST Act, 2017, had sent the same with its recommendation for necessary action to the Standing Committee on Anti-profiteering on 03.08.2018 as per the provisions of Rule 128 (2) of the CGST Rules, 2017. This application was duly considered by the Standing Committee on Anti-profiteering in its meeting held on 06.09.2018 and was referred to the DGAP for conducting detailed investigation on the allegations levelled by the Applicant No. 1.

2. The DGAP has stated in his Report dated 03.04.2019 that the above flat was booked by the Applicant No. 1 on 19.01.2017 before the GST had come in to force w.e.f. 01.07.2019 and the following demands had been raised on him by the Respondent as per the Table given below:-

Table-'A'

(Amounts in Rs.)

Particulars	Area	Date	Basic Cost	S.T. @4.5%	GST	Other Charges	Total
Agreement Value (pre-GST) (A)	1465		₹ 63,00,000	₹ 2,83,500			₹ 65,83,500
Booking Amount (B)		19.01.2017	₹ 4,78,500	₹ 21,533			₹ 5,00,033
On Intimation of offer of possession (C)		12.03.2018	₹ 58,21,500		701178		₹ 65,22,678
On Intimation of offer of possession (D)		03.04.2018	₹ 34,008		₹ 4,082		₹ 38,090
Total (E)			₹ 63,34,008	₹ 31,533	₹ 7,05,260		₹ 70,60,801
Excess Demand (F=E-A)			₹ 34,008				₹ 4,77,301

3. The DGAP has also stated that the Applicant No. 1 had submitted the following documents along with his complaint:-

1. Duly filled in Form APAF-1.
2. Copy of agreement and allotment letter of the Respondent.
3. Receipt of amounts paid.
4. Summary of Cost Comparison for pre & post GST periods.
5. Cost Sheet.
6. Copy of PAN Card as proof of identity.

4. The DGAP had issued Notice under Rule 129 (3) of the CGST Rules, 2017 on 15.10.2018 asking the Respondent to intimate whether he admitted that the benefit of ITC had not been passed on to the above Applicant through commensurate reduction in the price of the flat and if so, to suo moto determine the quantum of such benefit and communicate the same with necessary evidence. An opportunity to inspect the non-confidential evidence/information submitted by the Applicant No. 1 was also afforded to the Respondent between 22.10.2018 to 24.10.2018 which he had not utilised. The Applicant No. 1 was also given an opportunity to inspect the non-confidential documents/reply furnished by the Respondent on 01.04.2019. The Authorised Representative of the above Applicant had availed of the said opportunity and reiterated the allegation that extra charges were collected by the Respondent on account of Labour Cess and the extra burden of GST was borne by him as no benefit of ITC was passed on by the Respondent to him.

5. In response to the Notice dated 15.10.2018, the Respondent has replied vide his letters/emails dated 31.10.2018, 10.11.2018, 24.12.2018, 03.01.2019, 04.02.2019, 25.03.2019 and 29.03.2019. The contents of the replies given by the Respondent have been given in brief by the DGAP as under:-

- a) The Respondent stated that his project "Gulmohar Greens" had four different categories of flats, "Palm Wood Royal" being one of them.
- b) Possession of the flat was offered to the Applicant No. 1, although no Completion Certificate or Occupancy Certificate issued by any competent authority, was available.
- c) The Respondent had two projects- a residential project by the name of 'Gulmohar Greens' and a commercial project by the name of 'Anandam Square'. The Respondent provided bifurcation of the turnover from the said projects in both pre-GST and post-GST periods.
- d) The Respondent stated that there was no substantial benefit of ITC under the GST regime and to the extent there was benefit of ITC, it was passed on to his recipients by way of reduction in prices. In case of the Applicant No. 1, the Respondent had offered, like other buyers in the project, an amount of Rs 75,000/- as reduction in price which was commensurate with the benefit of ITC availed by the Respondent.

e) Vide e-mail dated 03.01.2019, the Respondent stated that he had passed on GST benefit amounting to close to Rs. 17 lakhs to the buyers of flats in 'Gulmohar Greens' and in respect of the above Applicant, the Respondent had offered some benefit which the Applicant had refused to accept.

f) The Respondent submitted that almost 85% of the project had already been constructed during the pre-GST regime and only 15% remained to be completed in the GST regime.

6. The DGAP has further intimated that the Respondent has also submitted the following documents:-

- a. Copies of GSTR-1 Returns for the period from July, 2017 to April, 2018.
- b. Copies of GSTR-3B Returns for the period from July, 2017 to December, 2018.
- c. Copies of Tran-1 & Tran-2 Returns for the period from July, 2017 to December, 2017.
- d. Copies of VAT & ST-3 Returns for the period from April, 2016 to June, 2017.
- e. Copies of all demand letters, Sale Agreement/Contract issued to the Applicant.
- f. Tax rates - pre-GST and post-GST.
- g. Copies of Balance Sheets for FY 2016-17 & FY 2017-18.
- h. Copy of Electronic Credit Ledger for the period 01.07.2017 to 31.03.2018.

- i. CENVAT/Input Tax Credit register for the period from April, 2016 to June, 2017 and July, 2017 to September, 2018.
- j. Copy of Project Report submitted to the RERA.
- k. List of home buyers in his project "Gulmohar Greens".

7. The DGAP after investigation has stated that the main issue for determination was whether there were benefits of reduction in the rate of tax or additional ITC on the supply of construction services provided by the Respondent after coming in to force of the GST w.e.f. 01.07.2017 and whether the Respondent had passed on the above benefits to the recipients in terms of Section 171 of the CGST Act, 2017 or not. The DGAP has also stated that the Respondent vide letter dated 16.11.2018, submitted a copy of the allotment letter dated 22.02.2017, which contained the sale agreement to build/construct and payment plan for the sale of Flat No. 6B, 6th Floor, Tower-16, to the Applicant No. 1, in his project 'Gulmohar Greens', measuring 1465 sq. ft., at the basic sale price of Rs. 63,00,000/- plus applicable taxes. The details of the payment plan as per the agreement, are furnished in Table below:-

Table-'B'

(Amount in Rs.)

S. No.	Payment Stages	Basic Value	AMC	Service Tax	Maintenance Security	Total
1	At the time of Booking	4,78,500	-	21,533	-	5,00,033
2	On initiation of offer of Possession	57,33,250	73,250	2,68,584	15,000	60,90,484
Total		62,11,750	73,250	2,90,517	15,000	65,90,517

8. The DGAP has also submitted that the contention of the Respondent that given his business model, there was no substantial benefit of ITC under the GST regime and whatever benefit was there, it was passed on to the customers by way of discounts, has no merit as no logical reasoning was provided by the Respondent regarding the method of computation and determination of benefit that had accrued to him post-GST due to benefit of additional ITC and no conclusive evidence in support of his claim that such benefit had been passed on, was provided. The DGAP has further submitted that the Respondent's submission that the Applicant' No. 1's intentions were mala fide in alleging profiteering, as the above Applicant was also offered a discount of ₹ 75,000/-, which was refused, did not have any merit as the benefit so offered was neither in the form of reduction in the price nor any basis of calculation of such amount was provided. Therefore, the additional ITC available to the Respondent and the amounts received by him from the Applicant and other recipients, pre and post implementation of GST, had to be taken into account to determine the benefit of ITC that was required to be passed on.

9. The DGAP has further submitted that the ITC pertaining to the residential units which were under construction but not sold was provisional which may be required to be reversed by the Respondent, if such units remained unsold at the time of issue of the Completion Certificate (CC). The DGAP has also contended that his above submission was supported by para 5 of Schedule-III of the CGST Act, 2017 and Clause (b) of Paragraph 5 of Schedule II of the CGST Act, 2017, therefore, the ITC pertaining to the units which were under construction but not sold was

provisional ITC which might be required to be reversed by the Respondent in terms of Section 17 (2) & Section 17 (3) of the CGST Act, 2017. Therefore, the DGAP has claimed that the ITC pertaining to the unsold units was outside the scope of this investigation and the Respondent was required to recalibrate the selling price of such units to be sold to prospective buyers by considering net benefit of additional ITC available to him post-GST.

10. The DGAP has also observed that prior to 01.07.2017, i.e., before the GST was introduced, the Respondent was eligible to avail CENVAT credit of Service Tax paid on input services however, CENVAT credit of Central Excise Duty paid on inputs was not admissible, as per the CENVAT Credit Rules, 2004, which were in force at the material time. The DGAP has further observed that the Respondent was not collecting VAT from his customers but he was discharging his output VAT liability on deemed 10% value addition to the purchase value of the inputs, therefore, there was no direct relation between the turnover reported in the VAT returns for the period from April, 2016 to June, 2017 filed by the Respondent and the actual consideration collected from the home buyers and therefore, the credit of VAT paid on the inputs and the VAT turnover was not considered for computation of the ITC ratio to the turnover for the pre-GST period by the DGAP. Further, he has stated that post-GST, the Respondent could avail the ITC of GST paid on all the inputs and input service.

11. The DGAP on scrutiny of the data submitted by the Respondent has found that there was a mismatch in the instalments paid and due

from the customers as per the homebuyers list and its reconciliation with the turnover reported in the GSTR-3B and ST-3 Returns. Similarly, there was a mismatch in the credit availed in the pre and post-GST era as shown in the ST-3 and GSTR-3B Returns with the reconciliation figures of credit. The DGAP has also claimed that despite repeated requests, the Respondent had failed to submit GSTR-1 Returns for the period from May 2018, to September, 2018 and Electronic Credit Ledger for the period from April, 2018 to September, 2018. In one of his replies dated 03.01.2019, the Respondent had submitted that due to shortage of funds, he was unable to furnish the GSTR-1 Returns for the period from May, 2018 onwards. The DGAP has further claimed that from the GST portal, it was observed that the GST registration of the Respondent was cancelled on 06.12.2018. The DGAP has also reported that from the information submitted by the Respondent covering the period from April, 2016, to September, 2018, the details of the ITC availed by him, his turnover from the project 'Gulmohar Greens', the ratio of ITC to turnover, during the pre-GST period from April, 2016 to June, 2017 and the post-GST period from July, 2017 to September, 2018 periods, is furnished in the Table-'C' below:-

Table-'C'

(Amount in ₹)

S. No.	Particulars	April, 2016 to March, 2017	April, 2017 to June, 2017	Total	July, 2017 to March, 2018	April, 2018 to Sep, 2018	Total
				(Pre-GST)			(Post-GST)
1	2	3	4	(5)=(3)+(4)	6	7	(8)=(6)+(7)
1	CENVAT of Service Tax Paid on Input Services (A)	41,00,400	10,21,467	52,11,867	-	-	-
2	Credit of VAT Paid on Purchase of Inputs (B)	0	0	0	-	-	-
4	Input Tax Credit of GST Availed (C)	-	-	-	1,40,68,228	63,25,578	1,93,94,105
6	Total CENVAT/VAT/Input Tax Credit Available (D)=(A)+(B) or (C)	41,00,400	10,21,467	52,11,867	1,40,68,228	63,25,578	1,93,94,105

6	Total Turnover as per reconciliation of instalment paid and due) (E)	12,31,98,617		12,31,98,617
7	Total Saleable Area (in sq. ft.) (F)	2,04,388		2,04,388
8	Area Sold relevant to Turnover as per Home Buyers List (Flats sold upto 30.09.2018) (G)	1,56,000		1,56,000
9	Relevant CENVAT/INPUT TAX CREDIT (H) [(D)/(G)](F)	39,77,843		1,48,02,125
10	Ratio of CENVAT/ Input Tax Credit to Turnover (H)/(E)	3.23%		6.52%

12. On the basis of the above Table the DGAP has argued 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 3.23% and during the post-GST period from July, 2017 to August, 2018 it was 6.52% which confirmed that post-GST, the Respondent had benefited from the additional ITC to the tune of 3.29% [6.52% (-) 3.23%] of the total turnover. Accordingly, the DGAP has assessed the amount of profiteering by comparing the applicable tax rates and the ITC available during the pre-GST period (April, 2016 to June, 2017) when Service Tax @4.5% with the post-GST period (July, 2017 to September, 2018) when the effective GST rate was 12% (GST @18% alongwith 1/3rd abatement on value) on construction service, fixed vide Notification No.11/2017-Central Tax (Rate) dated 28.06.2017. On the basis of the figures contained in the above Table, the comparative figures of ITC availed/available during the pre-GST period and post-GST period and the profiteered amount/excess collection have been furnished by the DGAP as per Table-'D' as under:-

Table-'D'

(Amount in ₹)

S.	Particulars	Pre-GST	Post-GST
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No.				
1	Period	A	April, 2010 to June, 2017	July, 2017 to Sep 2018
2	Output tax rate (%)	B	4.50%	12.00%
3	Ratio of CENVAT/ Input Tax Credit to Total Turnover as per Table - E above (%)	C	3.23%	6.52%
4	Increase in input tax credit availed post-GST (%)	D	-	3.29%
5	Analysis of Increase in input tax credit:			
6	Total basic cost Demand raised during July, 2017 to September, 2018 as per home-buyers data	E		24,84,23,360
7	GST charged	F = E*12%		2,98,10,803
8	Total demanded	G = E + F		27,82,34,163
9	Recalibrated Base Price	H = E*(1-D) or 96.71% of E		24,02,50,231
10	GST @12%	I = H*12%		2,88,30,028
11	Commensurate demand price	J = H + I		26,90,80,259
12	Excess Collection of Demand or Profiteering Amount	N = G - J		91,53,904

13. The DGAP has also stated on the basis of the above Table(s) that the additional ITC of 3.29% of the taxable turnover should have resulted in commensurate reduction in the base price as well as cum-tax price, in terms of Section 171 of the CGST Act, 2017 and this benefit of the additional ITC was required to be passed on to the recipients. The DGAP has also computed the extent of profiteering or the benefit not passed on by the Respondent, after taking into account the CENVAT/ITC availability pre and post-GST and the details of the amount collected from the home buyers during the period from 01.07.2017 to 31.08.2018 and claimed that the amount of benefit of ITC which had not been passed on or in other words, the profited amount came to Rs. 91,53,904/- which included GST on the base profited amount of Rs. 81,73,129/-. The home buyers (upto 30.09.2018) and Unit No. wise break-up of this amount has been given in Annex-14 of the DGAP's Report. This amount was inclusive of Rs. 2,14,512/- (including GST on the base amount of Rs. 1)

1,91,529/-) which was the profiteered amount in respect of the Applicant No. 1, mentioned at Serial No. 23 of Annex-14 of the DGAP's Report. The DGAP has also mentioned that the Respondent had supplied construction services in the State of Uttar Pradesh only.

14. The above Report was considered by the Authority in its sitting held on 08.04.2019 and vide notice dated 09.04.2019 the Respondent was directed to explain why the Report dated 03.04.2019 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 asked to show cause 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 decided that the Applicants and the Respondent be asked to appear on 26.04.2019. Since, the Respondent had asked for adjournment of the hearing scheduled on 26.04.2019, further hearings took place on 03.05.2019 and 22.05.2019. During the course of the hearings the Applicant No. 1 was represented by Sh. A.B. Singh, Authorised Representative of the Applicant No.1, the DGAP was represented by Smt. Gayatri, Deputy Commissioner and the Respondent was represented by Sh. B.K. Bansal, Advocate, Sh. Sharan Bansal, Advocate, Sh. Piyush Makkar, CA and Sh. Raghav Singhal, Advocate.

15. The Respondent vide his reply dated 03.05.2019 has denied the allegations regarding profiteering and claimed that the methodology used by the DGAP was faulty and had no legal backing in as far as excluding the credit of VAT available to the Respondent during the pre-GST era.

from the calculations of ratios of credit to the turnover was concerned. He further claimed that the factual errors in the calculations as detailed below had serious implications on the amount of profiteering:-

- a) That the total turnover of the Respondent as reflected at Serial No. 6 of Table-C of the DGAP's Report and Serial No. 6 of Table-D of the Report for the post-GST period were different from each other and the correct amount of turnover during the relevant period was Rs. 22,70,04,666/- only which was related to the construction of the residential complex as the other figure of Rs. 24,84,23,360/- was inclusive of other collections which were non-taxable or not related to the construction service.
- b) That the figure of total area sold up to 30.09.2018 (Serial No. 8 in Table-C of the DGAP Report) had been taken wrongly. In the the homebuyers list submitted to the DGAP Flat No. T-17-2A (area 1635 sq. ft.) booked in the name of Ms. Poonam Singh had been cancelled and no payments were ever received against this flat. Therefore, the area measuring 1635 sq. ft. of this cancelled booking should have been excluded from the total area sold and the figure of 1,56,000 sq. ft. mentioned in Serial No. 8 of the Table-C should be taken as 1,54,365 sq. ft.
- c) That he has two projects – (i) a residential project by the name of 'Gulmohur Greens' and (ii) a commercial project by the name of 'Anandam Square' and as the investigation pertained to the residential project only, the DGAP had correctly taken the turnover for the residential project for both the pre-GST and post-GST periods. However, the amount of credit availed during the pre-GST as well as the post-GST period has been taken for both the above project together inspite of the

fact that the amounts of credit pertaining to the two projects were separately provided to the DGAP during the investigation. He has requested that as the credit availed for the commercial project was outside the scope of the present investigation this should be excluded from the calculations made in Table-C as well as Table-D of the DGAP's Report.

d) That even though there was a single registration under the GST for both the projects being in the same state i.e. Uttar Pradesh, yet the credit figures for both the projects were separately maintained and were available which were submitted to the DGAP. The consolidated credit figures for both the projects taken together were wrong as were reflected at Serial No. 1, 4 and 5 of Table-C of the DGAP Report. The Respondent has also argued that he had proof of the correct figures available as per the ST-3 Returns for the pre-GST and GSTR-3B returns for the post-GST period which had already been submitted to the DGAP.

16. That the DGAP has not considered the fact of passing on the benefit of additional ITC in the post-GST period in the form of reduction in GST collected from the buyers inspite of his having submitted the details to the DGAP during the investigation and the only reason given in this regard was that the Respondent had not specified the basis of calculation for the benefit passed on to individual buyers whereas he has specified the basis of calculation along with an illustration and given detailed account of the total benefit passed on to individual buyers on construction service which amounted to a total of Rs. 16,66,115/- in the form of reduction in the GST collected from the buyers on account of

increased availment of ITC. His formula for calculation simply divided the extra burden of increased tax rate under GST regime into two equal halves, one of which has been borne by the buyer and the other half has been refunded to each buyer through cheques by him.

17. The calculations as per the above formula as submitted by the Respondent are as below:-

Service Tax Rate in pre-GST period: 4.5% of basic cost

GST Rate in the post-GST period: 12% of basic cost

Extra Burden: 7.5% i.e. $(12\% - 4.5\% = 7.5\%)$

The Respondent has claimed that half of the extra burden i.e. 3.75% $(7.5\% / 2 = 3.75\%)$ of the basic cost as per the demand raised after 30.06.2017 has been refunded to the buyers through account payee cheques. The calculations in respect of 21 such buyers were submitted by the Respondent and he has claimed that an amount of Rs. 16,66,115/- on account of construction services was passed on as benefit to the buyers which should be excluded from the alleged amount of profiteering.

18. He has also mentioned that his formula for passing on the benefit on account of increased ITC was that in case the agreed price was Rs. 100/-, as per the normal situation GST levy would amount to Rs. 12/- @ 12% and the total price inclusive of GST would be Rs. 112/-. However, to pass on the benefit of increased ITC, the Respondent had worked out the total amount chargeable from the buyer by applying GST @ 6% (i.e. 50% of 12%) and collected Rs. 106/- only inclusive of tax. The

Respondent has further mentioned that as the tax to be paid to the Government was 12% only, he had reworked the base price by applying backward calculation taking the total price inclusive of tax as Rs. 106/- and rate of Tax as 12% and calculated the base price as $106/1.12 = \text{Rs. } 94.64/-$ and thus the reduction in the agreed base price was Rs. 5.36/- (i.e. $100-94.64 = 5.36$), on which GST was charged as Rs. 0.64/- (i.e. $12\% \text{ of } 5.36 = 0.64$) and hence the total reduction in the base price and tax was Rs. 6/- (i.e. $5.36+0.64 = 6$).

19. The Respondent has also contended that by applying the above formula, the Respondent has passed on substantial benefit of Rs. 24,62,103/- to the eight buyers who had booked their flats after 01.07.2017 and he had passed on benefit even at higher rate of 7.5% to one more buyer amounting to Rs. 2,35,149/-. Thus, the Respondent has further contended that he has passed on total benefit of Rs. 26,97,253/- to nine buyers which should be excluded from the alleged profiteering amount.

20. The Respondent has also stated that the fact of availment of credit of VAT by him during the pre-GST period, has serious implication on deciding whether there was any profiteering by him on account of grant of benefit of ITC on all inputs and services which could not be simply brushed aside by saying that there was no direct relation between the turnover reported in the VAT returns and the actual consideration collected from the homebuyers. He has further stated that these two factors were even otherwise related as the total VAT credit taken and the VAT paid in the pre-GST period was for a particular value of the turnover

of sale of flats during the above period. He has also submitted that as the Service Tax and VAT were paid on a monthly basis the figure of VAT credit availed during a month was directly relatable to the total turnover reflected in the monthly figures for calculation of payment of Service Tax. Therefore, the Respondent has concluded that the DGAP has committed a serious error in excluding the credit of VAT in the calculations of entitlement of total credit available to him during the pre-GST period. He has also argued that as the GST levied with effect from 01.07.2017 has subsumed a large number of taxes therefore, a comparison of the credit entitlement during the pre-GST and the post-GST period has to essentially incorporate the credit of all the taxes which were available to the him during the pre-GST era. He has further argued that by excluding the credit of VAT, the DGAP has tried to compare the non-comparables and tilted the calculations against him. He has also pleaded that if it was intended to exclude credit of VAT in the pre-GST period from the scope of investigations, then the ITC available on account of SGST which was a state levy and 50% of the IGST availed during the post-GST period should also be excluded from the scope of investigation so that the investigation is confined to the same tax i.e. the central tax for which availment of credit during the pre-GST period has been considered. He has also submitted computations of ratios of CENVAT/ITC to turnover for the pre-GST period as 5.02% and for the post-GST period as 4.91% and has claimed that there was no profiteering as the net effect was -0.11%. He has further pleaded that It has been proposed in the show cause notice to invoke penal provisions under Section 29, 122, 123, 124, 125,

126 and 127 of CGST Act, 2017 read with Rule 21 and 133 of CGST Rules 2017, however, he has done no profiteering and therefore, he was not liable for contravention and imposition of penalty.

21. The Respondent has also averred that the construction service was a continuous service the supply of which got completed on the completion of the project and the payment was also received over a period of time and therefore, it was not possible to compute the benefit of ITC till the project was completed. He has further averred that as per the Notification No. 3/2019 Central Tax (Rate) 29.03.2019 the rate of tax on affordable housing has been reduced to 1% and for other houses it has been reduced to 5% but without ITC and hence the benefit of ITC would have to be reworked.

22. The Applicant No. 1 in his submissions dated 22.05.2019 has stated that he had booked a flat on 18.01.2017 with the Respondent with an initial amount of Rs. 5 lakhs and rest of the amount was to be paid on possession of the flat, the unit cost of which was Rs. 63,00,000/-. He has also alleged that the Respondent had intimated him that he could take over possession of the flat and accordingly on 05.04.2018 he had paid him the balance amount alongwith the additional charges on account of alteration, maintenance security, AMC and Labour Cess. He has further alleged that the Respondent had collected CGST and SGST from him in April, 2018 but did not deposit the same, and hence, his GST Registration was cancelled in December, 2018 and then he had deposited the amount on 21.01.2019. He has also stated that due to GST, he had to bear net loss of Rs. 4,32,194/- and so far the

Respondent had not passed even a single Rupee to him. He has further requested to recover the additional ITC from the Respondent with 28% interest which the Respondent had charged from his customers. He has also accepted that once he was offered a cheque of Rs. 75,000/- by the Respondent but it was post dated and hence he had not accepted it as no logic had been provided by the Respondent of the basis on which the above amount had been calculated.

23. The submissions dated 03.05.2019 filed by the Respondent were forwarded to the DGAP for his report. The DGAP has submitted revised investigation Report dated 30.05.2019, the brief facts of which are as follows:-
- a. That in respect of the total turnover and its reconciliation with the GSTR Returns for the period under investigation, the Respondent had failed to submit GSTR-1 Returns for the period from May, 2018 to September, 2018 and hence, their reconciliation with the homebuyers data could not be carried out. (Para 17 of the Report dated 03.04.2019). The homebuyers list was submitted by the Respondent after several reminders on 29.03.2019 (Annexure-11 of the Report dated 03.04.2019) which was still not reconciled with his GSTR-3B Returns. The Respondent, in his earlier submissions (Annexure-5 of the Report dated 03.04.2019) had provided incomplete turnover (~22.7 Cr.) which was taken in Row No. 6 of Table-C of the Report dated 03.04.2019 for the post-GST period, however, the updated turnover made available on a later date, had been taken for calculation of profiteering in Table-D. Total turnover in the post-GST period as per Row No. 6 of Table-D has been

updated in Table-C and the "Ratio of CENVAT/ Input Tax Credit to Turnover" as calculated in Table-C of the DGAP's Report dated 03.04.2019 has been revised to 5.90% from the earlier 6.52% for the post-GST period.

b. That in respect of the points raised by the Respondent in para 2.3.4 of his submission dated 03.05.2019, the Respondent had not provided the details of sold area in the pre-GST and the post-GST periods in the prescribed format due to which the area of cancelled flats as well as the flats from which no consideration was received in the pre-GST era was included in Row No. 8 (Area Sold relevant to Turnover as per Home buyers List) of Table-C of the Report dated 03.04.2019. From the details of homebuyers list as submitted by the Respondent in his submission dated 03.05.2019, the "Area Sold relevant to Turnover as per Home buyers List" and the "Relevant CENVAT/Input Tax Credit available" as calculated in Row No. 8 and 9 of Table-C of the Report dated 03.04.2019, for the pre-GST period had been revised. Accordingly, "Ratio of CENVAT/ Input Tax Credit to Turnover" as calculated in Row No. 10 of the above Report has been revised to 2.81% from the earlier 3.23% for the pre-GST period. As a result, the additional ITC in the post-GST period, as a percentage of the turnover, has been revised to 3.09% [5.90% (-) 2.81%], instead of 3.29% reported earlier. As the "Ratio of CENVAT/Input Tax Credit to Turnover" in Table-C of the Report has been revised, the quantum of profiteering calculated in Table-D of the Report, has also been revised to Rs. 85.97,436/- from the earlier Rs. 91.53,904/-. Both the revised Tables as well as the revised home

buyer/Unit No. wise break-up of the profiteered amount (Annexure-14 of the DGAP's report) were enclosed with the revised Report.

Table 'C' (REVISED)

(Amount in ₹)

S. No.	Particulars	April, 2016 to March, 2017	April, 2017 to June, 2017	Total	July, 2017 to March, 2018	April, 2018 to Sep. 2018	Total
				(Pre-GST)			(Post-GST)
1	2	3	4	5)=(3)+(4)	6	7	8)=(6)+(7)
1	CENVAT or Service Tax Paid on Input Services (A)	41,90,400	10,21,467	52,11,867	-	-	-
2	Credit of Input Paid on Purchase of Input (B)	0	0	0	-	-	-
3	Input Tax Credit of GST Availed (C)	-	-	-	1,40,88,229	53,26,378	1,94,14,607
4	Total CENVAT/IVA/ Input Tax Credit Available (D)=(A)-(B)+(C)	41,90,400	10,21,467	52,11,867	1,40,88,229	53,26,378	1,94,14,607
5	Total Turnover as per commercial/valuation of settlement paid and due (E)			12,31,29,617			14,84,23,380
6	Tax Deductible Area (in sq. Ft.) (F)			2,04,390			2,04,390
7	Area sold relevant to Turnover as per Home buyers List (Take your upto 30.09.2018) (G)			1,70,688			1,70,688
8	Ratio of CENVAT/INPUT TAX CREDIT (H)=(D)/(E)*100			4.21%			13.16%
9	Ratio of CENVAT/INPUT TAX CREDIT (I)=(H)-(F)/(G)*100			2.81%			5.90%

Table 'D' (REVISED)

(Amount in ₹)

S. No.	Particulars		Pre-GST	Post-GST
			April, 2016 to June, 2017	July, 2017 to Sep 2018
1	Price	A		
2	Output tax rate (%)	B	4.50%	12.00%
3	Ratio of CENVAT/ Input Tax Credit to Total Turnover as per Table - C above (%)	C	2.81%	5.90%
4	Increase in input tax credit availed post-GST (%)	D	-	3.09%
5	Analysis of increase in input tax credit:			
6	Total Basic cost Demand raised during July, 2017 to September, 2018 as per home-buyers data	E		24,84,23,380
7	GST charged	F= E*12%		2,98,10,803
8	Total demanded	G=E+F		27,82,34,183
9	Re-calculated Basic Price	H=E/(1-D) or 96.71% of E		24,07,47,076
10	GST @12%	I=H*12%		2,88,89,649
11	Commercial Demand price	J=H+I		26,96,36,725
12	Excess Collection of Demand or Profiteering Amount	K=J-G		8,97,436

24. That as regards the basis of calculation and the methodology adopted in the Respondent's submission dated 03.05.2019, it was not uniform for all the homebuyers and was not in line with the methodology adopted by the DGAP

25. Further hearings took place on 06.06.2019 and 18.07.2019, during which the Respondent has filed additional written submissions dated 06.06.2019, 12.06.2019 and 01.08.2019. The Respondent has stated that in reply to his submissions relating to non-consideration of credit of VAT in the pre-GST period the DGAP has stated that this point was raised by the Respondent in his submissions made before the DGAP during the investigation and it was part of his Report dated 03.04.2019 (para 17). The only ground for not considering the credit of VAT in the pre-GST period as mentioned in Para 17 of the DGAP's Report was that the Respondent was not collecting VAT from his customers but discharging output VAT liability on deemed 10% value addition basis and there was no direct relationship between the turnover reported in the VAT Returns for the period from April, 2016 to June, 2017 and the actual consideration collected from the home buyers. In this regard the Respondent has submitted that the payment of VAT on deemed value addition basis and availment of credit of VAT on inputs was perfectly in accordance with the provisions of the UP state VAT law. The Respondent has also contended that he has filed monthly VAT Returns in which the credit of VAT has been duly allowed by the VAT authorities. The basis of levy of VAT on a builder providing construction service by way of sale of flats may be on deemed sale of goods, but the fact remained that the VAT paid by the Respondent and the credit of VAT admissible to him was not deemed or fictional but real. He has also argued that in the scheme of taxation the VAT was payable by the Respondent in this case and the payment of VAT and credit of VAT was not at all linked to the

collection of VAT from the Respondent's customers. The non-collection of VAT from the customers in no way mitigated the Respondent's liability to pay VAT. Once the fact of payment of VAT by the Respondent was acknowledged by the DGAP, the credit of VAT admissible to him has also to be allowed irrespective of whether he has collected VAT from his Customers or not. He has further argued that as regards that there was no direct relationship between the turnover reported in the VAT Returns for the period from April, 2016 to June, 2017 and the actual consideration collected from the home buyers, the availment of credit of VAT or even CENVAT was never linked to the consideration collected from the home buyers. In fact, the eligibility for credit on inputs was linked to his use in the supply / sale of outputs. Even under the GST regime the entitlement for ITC was not linked to the turnover of the output supplies but was rather linked to the use of inputs / input services in the course or furtherance of business. Even otherwise, the turnover in the VAT Returns and the actual consideration collected from the home buyers was related as the total VAT credit taken and the VAT paid in the pre GST period was for a particular value of the turnover of sale of flats during the pre-GST period. As the Service Tax and VAT were paid on monthly basis the figure of VAT credit availed during a month was directly relatable to the total turnover reflected in the monthly figure for calculation of payment of Service Tax.

26. The Respondent has also argued that the DGAP in para 3.2.4 of his Report dated 30-05-2019 has correctly worked out the area sold up to 30.09.2018 as 1,54,365 sq. ft. and hence the entitlement of the

Respondent to credit in the pre-GST as well as the post-GST period should have been worked on this area, as the profiteering has been worked out on the turnover of this area. While the DGAP in his previous Report dated 03.04.2019 has correctly kept the value of factor "G" (i.e. area sold up to 30.09.2018) as same in Row No. 8 of Table-C for the pre-GST and the post-GST period, but his Report dated 30.05.2019 has taken two different figures of area sold up to 30.09.2018 for the pre-GST and the post-GST period for calculating the ITC entitlement. He has further argued that it was not understood as to how the figure of area sold up to a particular date (30.09.2018) could be different for the pre-GST and the post-GST period. He has claimed that this figure has to be the same i.e. 1,54,365 sq. ft. in Row No. 8 for both the periods and by taking figure of 1,35,655 sq. ft. in Row No. 8 of Table-C for the pre-GST period the DGAP has denied the benefit of credit to the Respondent in the pre-GST period on the differential area of 18,710 sq. ft. (154365-135655). He has further claimed that it was only for the purpose of working out the entitlement of credit that the area sold up to a particular date has been considered relevant and this figure has to be same irrespective of whether the calculations were made for the pre-GST or the post-GST period, therefore, the calculations made in Table-C in the DGAP's Report dated 30.05.2019 were wrong.

27. The Respondent has also stated that the credit figures of residential project only should be considered and not of both the residential and the commercial project taken together as the two projects were altogether different from each other and were situated at a distance

of about 8 Kms., supplying different kind of units viz. residential houses in the residential project and shops in the commercial project, with different usage, clientele and price structure.

28. The Respondent has also submitted that the DGAP in para 2.3.3 of his Report dated 30.05.2019 has mentioned that the figure of Rs. 22.7 Crore mentioned in Table-C of his Report dated 03.04.2019 was taken because the Respondent had provided incomplete information to which the Respondent has submitted that in the last updated information submitted by him to the DGAP on 29.03.2019 which was listed as Annexure-11 of the DGAP's Report dated 03.04.2019, he had given an exhaustive chart giving details of the turnover in which the figure of turnover of Rs. 22,70,04,666 was prominently mentioned in second column of the chart. It was only from this chart that the DGAP has picked up the figure of Rs. 22,70,04,666 initially in Table-C of the Report which was the correct and reconciled figure with the Returns. All the requisite GSTR-3B and GSTR-1 Returns along with a detailed breakup of the turnover and credit in respect of the residential and the commercial project were on record of the DGAP on 03.05.2019 and therefore, the DGAP should have considered the correct figure of Rs. 22,70,04,666/- in Table-C of his Report dated 30.05.2019. To substantiate that the correct figure of turnover was Rs. 22,70,04,666/-, the Respondent has submitted a reconciliation statement as per the Table below vis-à-vis the figure of Rs. 24,84,23,360/- as adopted by the DGAP from the home buyers list:-



	Figures as adopted by DGAP from Home Buyers List	248423360
Less:	Demands which have to be raised after 30/09/2018 i.e. beyond investigation period	21661125
Less:	Demands which were raised in pre-GST period but received during post-GST period	20731551
Less:	Interest free maintenance security not forming part of GST Returns	2117460
Add:	Demands which were not in total consideration but mentioned in remarks of the agreement like meter, AMC and lifts	4846150
Add:	Demands related to other customers in respect of the flats which were completed in pre- GST period but no completion certificate was received	31756010
	Total turnover in GST Returns	240509384
Less:	Turnover related to AMC	5359822
Less:	Parking	2050000
Less:	Club	782500
Less:	PLC	5312395
	Turnover related to construction service	227004667

29. The Respondent has also submitted complete reconciliation statement of turnover and credit figures as per the GSTR-3B and GSTR-1 Returns for the relevant period and the project wise bifurcation as Annexure-2 of his submissions dated 06.06.2019 and summarized the figures of credit in both the pre-GST and post-GST period for the residential project as Rs.44,20,070/- for the pre-GST period and Rs.1,47,66,851/- for the post-GST period and the turnover figure for the post-GST period as Rs. 22,70,04,666/- in place of Rs. 24,84,23,360/-. He has further submitted that the area sold relevant to turnover (Flats sold up to 30.09.2018) in Row No. 8 of Table-C of the DGAP Report should be the same i.e. 1,54,365 sq. ft. for calculating the credit entitlement in the pre-GST as well as post-GST period.

30. The Respondent has also mentioned that even if for the sake of argument the figure of turnover as arrived at by the DGAP was used, still there was no profiteering on his part as would be evident from the Table below, considering VAT and actual figures of credit for residential project only and area sold up to 30.09.2018 but taking turnover figure of Rs. 248423360/- (though not admitted):-

Sr. No.	Particulars	April 16 to March 17	April 17 to June 17	Total		Total	
				Pre-Gst	July 17 to March 18	April to Sep 18	Post GST
1	2	3	4	5= (3) +(4)	6	7	8= (6)+ (7)
1	CENVAT of Service Tax paid on Input Services (A)	3598519	821551	4420070			
2	Credit of VAT Paid on Purchase of inputs (B)	3358498	408738	3767236			
4	Input Tax credit of GST availed (C)				11081099	3685752	14766851
5	Total CENVAT/VAT/ITC available (D)= (A)+ (B) or (C)	6957017	1230289	8187306	11081099	3685752	14766851

6	Total Turnover (as per reconciliation of Installments paid and due (E))			123199617			248423360
7	Total Saleable area (in sq. ft.) (F)			204395			204395
8	Area sold relevant to turnover as per Home Buyers List (Flats sold upto 30.09.2018 (G))			154675			154675
9	Relevant CENVAT/ ITC (H) = (D)* (G)/(F)			5195707			11174748
10	Ratio of CENVAT/ITC to Turnover (I) = (H)/ (E)			5.03			4.50
	Profiteered %						-0.53

31. The Respondent has also reiterated that the benefit of credit passed on to some of the home buyers as per the details given in Annexure-4 & 5 of his reply dated 03-05-2019 in the form of reduction in the base prices of the flats should be considered in the calculation of alleged profiteering if any. The Respondent has also submitted the details

of the benefit of ITC passed on to the buyers with the names of the beneficiaries.

32. The Respondent has also revised the Annexures attached with his submissions dated 06.06.2019 vide his submissions dated 12.06.2019 and stated that during the course of hearing on 06.06.2019 he had submitted Annexures-1 to 5 with his reply which did not have the legends to explain the abbreviations used in these Annexures. On being pointed out the above deficiency in the Annexures he has rectified and re-submitted the Annexures with proper legends.

33. The Respondent has also stated that during the course of past hearings, a point had emerged whether the alleged profiteering against him had to be worked out for the residential project only to which the investigations pertained or for both the residential and commercial projects taken together as they were covered under a single GST registration. In this regard, he has reiterated his earlier submission that the calculation of alleged profiteering should be confined to the residential project only and hereunder he has submitted the calculations for both set of cases viz. the residential project only and the residential plus commercial project taken together covered under a single GST registration by juxtaposing the actual figures in the revised Table-C of the DGAP's Report dated 30.05.2019, but including VAT credit for various options:-

Case 1: Considering the residential project only:



Scenario 1: When the actual figures for turnover and credit for the residential project only were taken, VAT credit was included and the area sold up to 30.09.2018 i.e. 1,54,365 sq. ft. was considered for calculations in the pre-GST as well as the post-GST period:-

Table-C

Sr. No.	Particulars	April 16 to March 17	April 17 to June 17	Total		April to Sep 18	Total
				Pre-Gst	July 17 to March 18		Post-Gst
1	2	3	4	5= (3) +(4)	6	7	8= (6)+ (7)
1	CENVAT of Service Tax paid on Input Services (A)	3598519	821591	4420070			
2	Credit of VAT Paid on Purchase of Inputs (B)	3358498	408738	3767236			
4	Input Tax credit of GST availed (C)				11081099	3685752	14766851
5	Total CENVAT/VAT/ITC available (D)= (A)+ (B) or (C)	6957017	1230289	8187306	11081099	3685752	14766851
6	Total Turnover (as per reconciliation of instalments paid and due (E))			123199617			227004666
7	Total Saleable area (in sq. ft.) (F)			204395			204395
8	Area sold relevant to turnover as per Home Buyers List (Flats sold upto 30.09.2018) (G)			154365			154365
9	Relevant CENVAT/ ITC (H)			6183290			11152152

	= (D)* (G)/(F)						
10	Ratio of CENVAT/ITC to Turnover [(H) / (E)]				5.02		4.91
11	Profiteered %						-0.11

Scenario 2: When the actual figures for turnover and credit for the residential project only were taken, VAT credit was included and the area sold in the pre-GST period i.e. 1,35,655 sq. ft. and the post-GST period i.e. 1,54,365 sq. ft. was taken separately:-

Table-C

Sr. No.	Particulars	April 15 to March 17	April 17 to June 17	Total		April to Sep 18	Total
				Pre-Gst 5= (3) + (4)	July 17 to March 18 6		Post-GST 8= (6)+ (7)
1	2	3	4		6	7	8= (6)+ (7)
1	CENVAT of Service Tax paid on Input Services (A)	3598519	821551	4420070			
2	Credit of VAT Paid on Purchase of Inputs (B)	3358498	408738	3767236			
4	Input Tax credit of GST availed (C)				11081099	3685752	14766851
5	Total CENVAT/VAT/ITC available (D)= (A)+ (B) or (C)	6957017	1230289	8187306	11081099	3685752	14766851
6	Total Turnover (as per reconciliation of Instalments paid and due (E)			1231996 17			227004666
7	Total Saleable area (in sq. ft.) (F)			204395			204395
8	Area sold relevant to turnover as per Home Buyers List (Flats sold upto 30.09 2018 (G)			135655			154365

9	Relevant CENVAT/ ITC (H) = (D)* (G)/(F)			5433836			11152352
10	Ratio of CENVAT/ITC to Turnover (I) = (H)/(E)			4.41			4.91
11	Profiteered %						0.502234

The Respondent has stated that the Alleged Profiteering Amount would be Rs 12,76,906/-

Case 2: Considering the residential project and commercial project together under single GST registration:

Scenario 1: When the actual figures for turnover and credit for the residential project plus commercial project were taken together, VAT credit was included and the area sold up to 30.09.2018 i.e. 1,54,365 sq. ft. for the residential project + 31,543 sq. ft. for the commercial project = total 1,85,908 sq. ft. was considered for the calculations in the pre-GST as well as the post-GST period:-

Table-C

Sr. No.	Particulars	April 16 to March 17	April 17 to June 17	Total		July 17 to March 18	April to Sep 18	Total
				Pre-GST	Post-GST			B= (6)+ (7)
1	2	3	4	5= (3) +(4)	6	7	8= (6)+ (7)	
1	CENVAT of Service Tax paid on Input Services (A)	4174693	1021455	5196148				
2	Credit of VAT Paid on Purchase of Inputs (B)	4077703	478561	4556264				
4	ITC of GST availed (C)				1324061	5220429	18461044	

5	Total CENVAT/VAT/ITC available (D) = (A)+ (B) or (C)	8252396	1500016	9752412	1324061 4	5220429	18461044
6	Total Turnover (as per reconciliation of Instalments paid and due (E))			12348669 8			225595712
7	Total Saleable area (in sq. ft.) (F)			243938			243938
8	Area sold relevant to turnover as per Home Buyers List (Flats sold upto 30.09.2018 (G))			185908			185908
9	Relevant CENVAT/ITC (H) = (D)* (G)/(F)			7432427			14069177
10	Ratio of CENVAT/ITC to Turnover (I) = (H)/E			5.02			5.11
	Profiteered %						-0.9137

The Respondent has stated that the Profiteering Amount was NIL and turnover and credit figures were taken for construction service only i.e. after excluding turnover for other charges and AMC and credit for AMC.

Scenario 2: When the actual figures for turnover and credit for the residential project plus commercial project were taken together, VAT credit was included and the area sold in the pre-GST period i.e. 1,35,655 sq. ft. for residential project + 7000 sq. ft. for commercial project = total 142655 sq. ft. and the area sold in the post-GST period up to 30.09.2018 i.e. 1,54,365 sq. ft. for the residential project + 31,543 sq. ft. for the commercial project = total 1,85,908 sq. ft. was considered separately:-



Table-C

Sr. No.	Particulars	April 16 to March 17	April 17 to June 17	Total			
				July 17 to March 18	April to Sep 18		
1	2	3	4	5= (3) +(4)	6	7	8= (6) + (7)
1	CENVAT of Service Tax paid on Input Services (A)	4174693	1021455	5196148			
2	Credit of VAT Paid on Purchase of Inputs (B)	4077703	478561	4556264			
4	ITC of GST availed (C)				1324061 4	522042 9	18461044
5	Total CENVAT/VAT/ITC available (D)= (A)+ (B) or (C)	8252396	1500015	9752412	1324061 4	522042 9	18461044
6	Total Turnover (as per reconciliation of Instalments paid and due (E)			12348669 8			275595712
7	Total Saleable area (in sq ft) (F)			243938			243938
8	Area sold relevant to turnover as per Home Buyers List (Flats sold upto 30.09.2018 (G)			142655			185908
9	Relevant CENVAT/ ITC (H) = (D)* (G)/(F)			5703213			14069377
10	Ratio of CENVAT/ITC to Turnover (I)= (H)/E			4.62			5.11
	Profiteered %						0.4866

The Respondent has further stated that the alleged Profiteering Amount would be Rs. 15,01,958/- and the turnover and the credit figures were taken for construction service only i.e. after excluding the turnover for other charges and AMC and credit for AMC.

In view of the above, the Respondent has submitted that even if the calculations were made by taking both the residential and commercial projects together and area sold upto 30.09.2018 was considered for

calculations of ratios for the pre-GST and the post-GST period and the credit of VAT was included, there was no profiteering.

34. The Applicant No. 1 vide his mail dated 06.06.2019 has stated that the Respondent has provided names of only 30 beneficiaries to whom he had passed on the ITC benefit and he has not provided data on how much ITC rebate was owed by him to the other customers or to the Applicant No. 1 and the formula by which he has arrived at that amount.

35. The Respondent vide his mail dated 01.08.2019 also submitted the Worksheet for calculation of credit mentioned in his submissions for calculation of profiteering and also stated that the No. of flats sold was 109 during the period of Investigation. He has also submitted the details of credit of VAT and the Service Tax as well as the details of post-GST credit for both his projects as under:-

	Project Gulmohar Green (Residential Project)	Anandam Square Project (Commercial Project)	TOTAL (Rs.)
MONTH	VAT CREDIT	VAT CREDIT	TOTAL VAT CREDIT
Apr-16	208401	72421	280822
May-16	209025	106294	315319
Jun-16	86049	104237	190286
Jul-16	231200	12625	243825
Aug-16	182021	109072	291093
Sep-16	133070	85982	219052
Oct-16	1067087	56701	1123788
Nov-16	161091	2205	163296
Dec-16	333868	82430	416298
Jan-17	186230	3993	190223
Feb-17	122980	5093	128073
Mar-17	437476	78152	515628

Apr-17	97422	0	97422
May-17	98389	26073	124462
Jun-17	212927	43750	256677
TOTAL	3767236	789028	4556264

Service Tax Credit Details

Quarter wise	Project Gulmohar Green (Residential Project)				Anandam Square Project (Commercial Project)			Total (Rs.)
	Service Tax Credit Forward charge Basis	Service Tax Credit Reverse charge Basis	Krishi Kalyan Cess Credit	Total Credit	Service tax	Krishi Kalyan Cess Credit	Total Credit	Total Credit as per ST-3 Return
APRIL 16 TO JUNE 16	366957	4235	3628	374820	89727	530	90257	465077
JULY 16 TO SEP 16	198231	28000	7083	233314	125204	4472	129676	362990
OCT 16 TO DEC 16	315964	137050	23323	676337	223523	7983	231505	907842
JAN 17 TO MARCH 17	2232643	1609	79796	2314048	120433	4303	124736	2438784
APRIL 17 TO JUNE 17	296500	496720	28331	821551	192873	7031	199904	1021455
Total	3410295	867614	142161	4420070	751759	24319	776078	5196148



Post GST Credit Details

	Particulars	Amount (Rs.)
	Total GST credit as per Returns for the investigation period (i.e. From July 2017 to Sep. 2018) for both the projects taken together (i.e. Gulmohar Green – residential + Anandam Square -Commercial)	20432887
Less	Credit taken from TRAN-1	-1002748
	Total Post GST credit	19430139
Less	Credit Relating to AMC (Advance Maintenance Charges Collected on behalf of Maintenance Agency)	-969095
	Total Credit relating to Construction service	18461044
	Credit Relating to Anandam Square(Commercial Project)	-3694193
	Credit relating to Gulmohur Green (Residential Project)	14766851

36 The Applicant No.1 vide his mail dated 10.08.2019 has also alleged that the Respondent had still not provided him the details which were asked by him. He has also requested to ask the Respondent to provide him with similar terms viz. pricing and the GST relief etc. as was provided by the Respondent to Sl. No. 1 Sh. Deepak Kumar Sharma, Unit No. T-17-6D as per Annexure-4 of the Respondent's submissions dated 12.06.2019. Again the Applicant No.1 vide his mail dated 02.09.2019 has stated that the Respondent has charged GST @ 6% in the case of Mr. Deepak Kumar Sharma and he has questioned that what methodology

was adopted in his case and why different yard stick was being used for him. He has also alleged that he has been burdened with a net loss of Rs. 4,32,194/- after introduction of GST and this loss should be compensated by the Respondent by reducing the price of flat. The Applicant No. 1 has also submitted that the Respondent has sold the flat to Mr. Deepak Kumar Sharma comprising of an area of 1635 sq. ft. @ Rs. 48,30,740/- where as he has sold the flat of 1465 sq. ft. for Rs. 63,00,000/- to him. He has further submitted that the base price of the flat in his case was Rs.4300 per sq. ft. whereas in the case of Mr. Deepak Kumar Sharma it was Rs. 2900 per sq. ft. although area of the flat sold to Mr. Deepak Kumar was greater than area of the flat sold to him.

37. The above submissions of the Respondent were forwarded to the DGAP vide order dated 27.08.2019 for filing clarification under Rule 133 (2A) of the CGST Rules, 2017 by 09.09.2019, however, the DGAP's reply was received on 18.10.2019 after a lapse of a period of more than one and half month. A copy of these submissions was forwarded to the Respondent vide e-mail dated 21.10.2019 however, till 22.11.2019 even after a lapse of a period of one month no response was filed by the Respondent. The Respondent vide his letter dated 22.11.2019 has requested for granting of opportunity to file his submissions. The above letter of the Respondent is nothing but an attempt to further delay the proceedings which are time bound. Since, the Respondent had not made any request for opportunity even after expiry of 4 weeks his request cannot be considered at this stage. Moreover, the Report dated

16.10.2019 is not being relied upon by this Authority in the present order and hence no prejudice will be caused to the Respondent.

38. We have carefully considered all the Reports filed by the DGAP, the submissions made by the Respondent and the Applicant No. 1 and the other material placed on record and find that the Applicant No. 1 had booked Flat No. 6B, Tower No. 16 with the Respondent in his project "Palm Wood Royal Gulmohar Green" viz. 'Gulmohar Green' for total consideration of Rs. 63,00,000/- as per the details furnished by the DGAP in Table-A of his Report. It is also revealed from the record that the above Applicant vide his complaint dated 06.04.2018, submitted to the Uttar Pradesh State Screening Committee on Anti-Profiteering, had alleged that the Respondent was not passing on the benefit of ITC to him inspite of the fact that he was availing ITC on the purchase of inputs at higher rates of GST which had resulted in benefit of additional ITC to him and was also charging GST from him @12%. It is further revealed that the above complaint was examined by the Standing Committee on Anti-Profiteering in its meeting held on 06.09.2018 and was forwarded to the DGAP for investigation who vide his Report dated 03.04.2019 has found that the ITC as a percentage of the total turnover which was available to the Respondent during the pre-GST period was 3.23% and during the post-GST period this ratio was 6.52% as per the Table-C mentioned above and therefore, the Respondent has benefited from the additional ITC to the tune of 3.29% (6.52%-3.23%) of the total turnover which he was required to pass on to the flat buyers of this project. He has also claimed that the Respondent has not reduced the basic prices of his flats

by 3.29% due to additional benefit of ITC and by charging GST at the increased rate of 12% on the pre-GST basic prices, he has contravened the provisions of Section 171 of the CGST Act, 2017. The DGAP vide his Report dated 03.04.2018 has further submitted that the amount of benefit of ITC which has not been passed on by the Respondent or the profiteered amount came to Rs. 91,53,904/- which included 12% GST on the basic profiteered amount of Rs. 81,73,129/-. The DGAP has also intimated that the above amount was inclusive of Rs. 2,14,512/- (including GST) which the Respondent has profiteered from the Applicant No. 1. He has also supplied the details of all the buyers who have purchased flats from the Respondent along with their Unit Numbers vide Annexure-14 attached with the Report in which the profiteered amount of Rs. 91,53,904/- has been computed.

39. It is also apparent from the record that the DGAP has submitted revised Investigation Report dated 30.05.2019 in which he has stated that after taking in to account the revised details of the area sold by the Respondent and the Respondent's taxable turnover during the period from April, 2016 to June, 2017 (i.e. pre-GST) and during the period from July, 2017 to September, 2018 (i.e. post-GST), the ratio of CENVAT/ITC to the taxable turnover, pre-GST was 2.81% and during the post-GST period, it was 5.90% which showed that post-GST, the Respondent has benefited from the additional ITC to the tune of 3.09% [5.90% (-) 2.81%] of the taxable turnover which was required to be passed on to the buyers by the Respondent.



40. The DGAP has also re-computed the profiteered amount after taking in to account the GENVAT/ITC availability pre and post-GST and the details of the instalments received by the Respondents from the Applicant No. 1 and the other home buyers during the period from 01.07.2017 to 31.09.2018 and stated that the amount of benefit of ITC which has not been passed on by the Respondents to his customers or the profiteered amount came to Rs. 85,97,436/- including GST which included GST (@ 12% or 18%) on the base profiteered amount of Rs. 76,76,282/- and which also included an amount of Rs. 2,01,472/- (including GST) which was profiteered by the Respondent from the above Applicant. The DGAP has also mentioned that the above computation of the profiteered amount was in respect of the 110 flat buyers and has further mentioned that the Respondent has claimed to have passed on the benefit of approximately Rs. 17 lakhs to 21 home buyers but has not provided any basis for quantification for the same and therefore the DGAP has not considered this amount in the calculation of profiteering.

41. The Respondent vide his reply dated 03.05.2019 has claimed that the methodology used by the DGAP was faulty as it excluded the credit of VAT available to the Respondent during the pre-GST era from the calculations of ratio of credit to the turnover. However, it is apparent from para 17 of the DGAP's Report dated 03.04.2019 that the Respondent has discharged his output VAT liability on the deemed taxable value by adding 10% in the purchase price of the inputs as per the Annexure-6 of the DGAP's Report dated 03.04.2019 and no VAT has been charged by

him from the home-buyers. As the taxable value for the purpose of output VAT liability of the Respondent was different from the actual base price collected from the homebuyers, the DGAP has neither considered the taxable value as reflected in the VAT Returns of the Respondent nor the VAT credit has been considered by him for computation of profiteering, instead the DGAP has taken into account the demands which have been shown in the home buyers list, as any variation in the credit/VAT liability of the Respondent has no impact on the consideration demanded or received by the Respondent from the home buyers. The above clarification given by the DGAP regarding not taking in to account the ITC availed by the Respondent in his VAT Returns for calculation of ratio of the CENVAT to the turnover during the pre-GST period from April, 2016 to June, 2017 is correct and hence the claim made by the Respondent that an amount of Rs. 37,67,236/- of ITC has been left out from calculation of the above ratio is not correct.

42. The Respondent has further claimed that the total turnover of the Respondent as reflected at Serial No. 6 of Table-C of the DGAP's Report dated 03.04.2019 was Rs. 22,70,04,666/- whereas it was Rs. 24,84,23,360/- at Serial No. 6 of Table-D of his Report for the post-GST period however, the correct amount of turnover during the relevant period was Rs. 22,70,04,666/- The above claim of the Respondent has not been admitted by the DGAP in his revised Report dated 30.05.2019 and he has taken the figure of turnover of Rs. 24,84,23,360/- in both the above Tables on the ground that this figure has been taken on the basis of the total turnover as per the reconciliation of the instalments paid and due

during the pre-GST period and on the basis of the total basic cost demands raised during July, 2017 to September, 2018, as per the home buyers list. Since the above figure has been taken by the DGAP on the basis of the information supplied by the Respondent himself therefore, the subsequent figure of Rs. Rs. 22,70,04,666/- cannot be considered for calculation of the above ratio and hence, this contention of the Respondent is not correct.

43. The Respondent has also argued that the figure of total area sold up to 30.09.2018 against Serial No. 8 in Table-C of the DGAP's Report dated 03.04.2019 has been taken wrongly and an area measuring 1635 sq. ft. of the cancelled booking should be excluded from the total area sold and the figure of 1,56,000 sq. ft. should be taken as 1,54,365 sq. ft. Perusal of revised Table-C of the revised Report dated 30.05.2019 shows that the above figure has been taken as 1,54,365 sq. ft. and hence the claim of the Respondent has been admitted by the DGAP.

44. The Respondent has further argued that he has two projects and while calculating the ratios of the CENVAT/ITC to the turnovers the amount of credit availed during the pre-GST as well as the post-GST period for both the projects together has been taken into account. Perusal of Serial No. 5 of the Report dated 03.04.2019 as well as the revised Report dated 30.05.2019 shows that an amount of Rs. 1,93,94,105/- has been shown as the ITC availed by the Respondent during the post-GST period. Since, the DGAP has conducted the present investigation in respect of the residential project only he has taken the above figure of ITC in respect of this project only. This figure is also

based on the reconciliation statement of ITC furnished by the Respondent himself. Therefore, the above argument of the Respondent is incorrect.

45. The Respondent has also stated that the DGAP has not considered the fact of passing on the benefit of additional ITC in the post-GST period in the form of reduction in the GST collected from the buyers which amounted to total amount of Rs. 16,66,115/-. The Respondent has also contended that by applying the above formula, he has passed on substantial benefit of Rs. 26,97,253/- in all on the basis that he has divided the extra burden of increased tax rate under GST regime into two equal halves, one of which has been borne by the buyer and the other half has been refunded to each buyer through cheques by him or by passing more than the half of GST. Perusal of the calculations made by the Respondent shows that he has computed the extra burden of GST @ 7.5% (12% GST-4.5% Service Tax) and claimed to have granted benefit of 3.75% being half of 7.50% to his customers. However, it is revealed from the record that the methodology adopted by the Respondent varies from customer to customer and has not been adopted uniformly in respect of all the customers. It will also be relevant to mention here that the above calculation is not correct as Section 171 requires passing on of the additional benefit of ITC on the basis of actual benefit available to a supplier and not on the basis of presumed figures of 7.5% of the additional GST as has been done by the Respondent.

46. Perusal of revised Annexure-14 submitted by the DGAP with his revised Report dated 30.05.2019 shows that the Respondent has

claimed to have passed on GST discount of Rs. 16,94,607/- to his buyers as has been mentioned in the last column of the above Annexure. However, it is revealed that the above discount has been given selectively to the customers mentioned at Serial No. 7, 8, 13, 14, 19, 21, 22, 25 etc. however, no discount has been given to Serial No. 1 to 6, 9 to 12, 15 to 18 etc. although they were also eligible to get it. Moreover, this amount has been claimed to have been passed on account of GST and not on account of ITC benefit and hence the above amount cannot be construed to have been passed on as benefit of ITC.

47. The Respondent vide Annexure-3 of his submissions dated 12.06.2019 has also claimed that he has passed benefit of ITC to the buyers who had purchased flats before 01.07.2017 through cheques. Perusal of the above Annexure shows that he has claimed to have made payment of Rs. 1,95,633/- on account of GST rebate vide cheque No. 845164 dated 06.06.2018 to one Sh. Amit Arora who has purchased Unit No. T-16-1A from him. However, perusal of the account statement attached with the above Annexure shows that only an amount of Rs. 95,526/- has been paid by the Respondent to him. Similar is the case in respect of the rest of the 20 others buyers details of whom have been attached by the Respondent with the above Annexure which only proves that the Respondent has given them rebate and not passed on the full benefit of ITC as there is no such entry in their account statements. Granting of rebates/discounts is the most prevalent practice followed in the construction industry to increase sales and hence the above rebate cannot be equated with the passing on of the benefit of ITC.

48. The Respondent has also not produced any reliable or cogent evidence either before the DGAP or this Authority in support of his contention that he has passed on the benefit of ITC by submitting the details of the entries made in his books of account or cheques issued to the buyers or the copies of the tax invoices/demand letters or the acknowledgements made by his customers of having received the benefit of ITC due to implementation of the GST. As discussed above the Respondent has only claimed to have passed on the discount/rebate on account of GST which cannot amount to passing on the benefit of ITC as per the provisions of Section 171 (1) of the CGST Act, 2017. Therefore, the above claim of the Respondent is frivolous and hence, the same cannot be accepted.

49. The Respondent has also submitted that non-consideration of the availment of credit of VAT by the DGAP during the pre-GST period has serious implication on deciding whether there was any profiteering by him. However, as has been discussed supra the Respondent has discharged his VAT liability on deemed turnover and has also not charged VAT from his customers and hence the DGAP has rightly not considered the ITC on VAT availed by the Respondent during the pre-GST period for computation of the profiteered amount. Accordingly, the ITC available on account of SGST which was a state levy and 50% of the IGST availed during the post-GST cannot be excluded from the computation of ratio of ITC to turnover. The ratios of CENVAT/ITC to turnover for the pre-GST period as 5.02% and for the post-GST period as 4.91% computed by the Respondent by adding ITC of VAT availed by

him during the pre-GST period is not correct and hence, the profiteering of -0.11% calculated by him also cannot be relied upon.

50. The Respondent has also pleaded that the construction service was a continuous service the supply of which got completed on the completion of the project and the payment was also received over a period of time and therefore, it was not possible to compute the benefit of ITC till the project was completed. In this connection it would be appropriate to mention that the benefit has to be passed on by the Respondent as soon as he avails benefit of ITC and as the Respondent is discharging his GST liability every month from the ITC he ought to pass on its benefit every month. The Respondent cannot be allowed to use different yardsticks while claiming the benefit of ITC himself and while passing on the same to his buyers. Therefore, there is no question of computation of the above benefit after completion of the project. In case the Respondent proposes to pass on the above benefit after the completion of the project he should also claim benefit of ITC only after completion of the project. It also needs to be remembered by the Respondent that the above benefit has been given by the Central as well as the State Govt. out of their own tax revenue with an intention to provide houses to the general public at affordable prices and hence he cannot appropriate the same and use it in his own business at the expense of the buyers more so when he has nothing to pay from his own account.

51. The Respondent has further pleaded that as per the Notification No. 3/2019 Central Tax (Rate) 29.03.2019 the rate of tax on affordable

12.11

houses and other houses has been reduced to 1% and 5% respectively and hence the benefit of ITC would have to be reworked. However, it is clear from the record that the present investigation pertains to the period from 01.07.2017 to 30.09.2018 and the above Notification would have effect prospectively w.e.f. 01.04.2019 only and hence the above pleading of the Respondent is not relevant.

52. It is also revealed from the revised Report dated 30.05.2019 that the DGAP on the basis of the submissions dated 03.05.2019 filed by the Respondent has revised the figures of the "Area Sold relevant to Turnover as per Home buyers List" and the "Relevant CENVAT/Input Tax Credit available" as per revised Table-C supra and has accordingly, he has reworked the "Ratio of CENVAT/ Input Tax Credit to Turnover" as 2.81% from the earlier 3.23% for the pre-GST period and from 6.52% to 5.90% for the post-GST period. As a result, the additional ITC in the post-GST period, as a percentage of the turnover, has been revised to 3.09% [5.90% (-) 2.81%], instead of 3.29%. As the "Ratio of CENVAT/Input Tax Credit to Turnover" in Table-C of the Report has been revised, the quantum of profiteering has also been revised by the DGAP to Rs. 85,97,436/- from the earlier Rs. 91,53,904/- as per the revised Table-D supra. He has further revised the home buyer Unit No. wise break-up of the profiteered amount as per revised Annexure-14 of the Report and has enclosed the same with his revised Report dated 30.05.2019. The revised computations made in revised Table-C and D have been made on the basis of the information submitted by the Respondent himself and are also as per the Returns filed by him during

the pre and the post-GST period and hence the same can be relied upon.

53. The Respondent has also contended that the DGAP in his Report dated 03.04.2019 has correctly kept the area sold up to 30.09.2018 as same in Row No. 8 of Table-C for the pre-GST and the post-GST period, but in his Report dated 30.05.2019 he has taken two different figures of the above area which was not correct. Perusal of revised Table-C of the revised Report dated 30.05.2019 shows that the DGAP has taken figure of the above area as 1,35,655 sq. ft. for the pre-GST period and figure of 1,54,365 sq. ft. for the post-GST period. As has been clearly mentioned in Row No. 8 of the revised Table-C that this figure has been taken from the list of home buyers which has been submitted by the Respondent himself, therefore, he is estopped from raising the above objection.

54. The Respondent has further contended that the DGAP has not taken in to account the figure of turnover of Rs. 22,70,04,666/- which was given by him as per the Returns filed by him and has considered the figure of Rs. 24,84,23,360/- for the post-GST period in his revised Report in Row No. 6 which was incorrect. Perusal of the revised Table-C of the revised Report shows that the above figure has been taken from reconciliation of the instalments paid and due from the house buyers details of which have been supplied by the Respondent only and hence, the Respondent cannot raise objections on the information supplied by him at this stage and hence the above contention of the Respondent cannot be accepted.

55. The Respondent has also mentioned that even if the turnover figure of Rs. 24,84,23,360/- was taken to be correct the ratio of ITC to turnover for the pre-GST period would be 5.03% and the same would be 4.50% for the post-GST period and hence the resultant ratio would be -0.53%. Perusal of the computations made by him in this regard shows that he has included the ITC of VAT of Rs. 37,67,236/- and taken the area sold relevant to turnover as 1,54,675 sq. ft. for both the pre and the post-GST periods whereas, as has been discussed supra, the above area is 1,35,655 sq. ft. for the pre-GST period and 1,54,365 sq. ft. for the post-GST period as per the home buyers list supplied by the Respondent himself. Since, the above computation of profiteering made by the Respondent is not based on the correct figure of the above area and ITC the same cannot be relied upon.

56. The Respondent has further mentioned that the profiteering should be computed in respect of the residential project only and not for the commercial project. He has accordingly worked out the ratio of CENVAT/ITC to turnover for the pre-GST period as 5.02% and 4.91% for the post-GST period and profiteering as -0.11%. He has also calculated the above ratios as 4.41%, 4.91% and 0.502234% for the residential project by including the ITC of VAT as per the area sold taken by the DGAP in revised Table-C supra and arrived at the profiteered amount of Rs. 12,76,906/-. He has also calculated the above ratios for both the residential and commercial projects together and claimed that the above ratios were 6.02%, 5.11% and -0.9137% respectively. The Respondent has further calculated the above ratios in case the VAT credit was

included and the area sold in the pre-GST period was taken as 1,35,655 sq. ft. for the residential project + 7000 sq. ft. for commercial project = total 142655 sq. ft. and the area sold in the post-GST period up to 30.09.2018 was taken as 1,54,365 sq. ft. for the residential project + 31,543 sq. ft. for the commercial project = total 1,85,908 sq. ft. which come to 4.62%, 5.11% and 0.4866% respectively and accordingly, he has computed the Profiteering Amount as Rs. 15,01,958/-. Perusal of the different scenarios given by the Respondent shows that they include the amount of ITC on VAT which has been disallowed as has been mentioned above and has also taken into account the figures of sold area which are not as per the house buyers list and also computed the above ratios by including both the projects together and hence the above ratios cannot be relied upon.

57. The Respondent vide mail dated 01.08.2019 has also submitted the Worksheet for calculation of credit mentioned in his submissions for calculation of profiteering as well as the details of VAT and Service Tax credit as per his own calculations in respect of both the projects. However, the figures mentioned in his submissions are different than those mentioned in the revised Table-C and since reliance has been placed on the figures mentioned by the DGAP in the above Table on the ground that the above figures were based on the information supplied by the Respondent himself he cannot resile from his earlier stand and hence, the above information supplied by him cannot be taken in to consideration.



58. Based on the above facts it is clear as per revised Table-C supra that during the pre-GST period the Respondent has availed CENVAT credit on the Service Tax during the pre-GST period from April, 2016 to June, 2017 amounting to Rs. 52,11,867/-, collected an amount of Rs. 12,31,99,617/- from his customers as turnover, has sold an area of 1,35,655sq. ft. relevant to the above turnover during the above period, has availed relevant amount of ITC of Rs. 34,59,066/- and accordingly, the ratio of CENVAT to the ITC was 2.81% during the pre-GST period in respect of his 'Gulmoher Green' project. It is also apparent as per the above Table that the ITC available to the Respondent in the post-GST period from July, 2017 to September, 2018 was Rs. 1,93,94,105/- and his turnover was Rs. 24,84,23,360/-. He has also sold an area of 1,54,365sq. ft., relevant to the above turnover during the above period. The proportionate ITC availed by the Respondent was Rs. 1,46,46,988/- on the basis of which ratio of ITC to turnover comes to 5.90%. Therefore, it is abundantly clear that the Respondent has benefited from the additional benefit of ITC to the tune of 3.09% (5.90%-2.81%) of the turnover which he is required to pass on to his customers as per the provisions of Section 171 of the above Act. Since the above figures of ITC and turnover have been taken from the Returns filed by the Respondent himself and the figures of sold area have been supplied by the Respondent himself, the same cannot be disputed by the Respondent and can be relied upon and accordingly, the above computations are held to be correct. Therefore, the profiteered amount is determined as Rs.85,97,436/- which includes GST @12% on the base profiteered amount.

of Rs. 76,76,282/- as per the revised Annexure-14 of the Report dated 30.05.2019 for the period w.e.f. 01.07.2017 to 30.09.2018 in terms of Rule 133 (1) of the CGST Rules, 2017. The Respondent is also held to have profiteered an amount of Rs. 2,01,472/- from the Applicant No. 1 including the GST.

59. It is also 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 Respondent as he has failed to pass on the benefit of additional ITC to his customers. Accordingly, he is directed to reduce the prices of his flats commensurate with the benefit of ITC as per the provisions of Rule 133 (3) (a) of the CGST Rules, 2017 as per the details mentioned supra. He is further directed to pass on an amount of Rs. 2,01,472/- to the above applicant and an amount of Rs. 83,95,964/- to the other flat buyers who are not Applicants in the present proceedings. The above amounts shall be paid within a period of 3 months from the date of issue of this Order to the Applicant No. 1 and the other eligible house buyers by the Respondent along with interest @18% from the date from which these amounts were realised by the Respondent from them, till they are paid as per the provisions of Rule 133 (3) (b) of the CGST Rules, 2017, failing which the above amounts shall be recovered by the concerned Commissioner CGST / SGST as per the provisions of the CGST/SGST Act and paid to the eligible house buyers.

60. The present investigation is only up to 30.09.2018 therefore, any additional benefit of ITC which shall accrue subsequently 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 or other buyers they shall be at liberty to approach the State Screening Committee Uttar Pradesh 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.

61. 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 profiteered an amount of Rs. 85,97,436/- as per the explanation attached to Section 171 of the CGST Act, 2017. Therefore, he is liable for imposition of penalty under Section 171(3A) of the above Act. Therefore, a Show Cause Notice be issued to him directing him to explain why the penalty prescribed under the above sub-Section read with Rule 133 (3) (d) of the CGST Rules, 2017 should not be imposed on him. Accordingly, the notice dated 09.04.2019 vide which it was proposed to impose penalty on the Respondent under Section 29 and 122-127 of the above Act read with Rule 21 and 133 of the CGST Rules, 2017 is hereby withdrawn to that extent.

62. Further this Authority as per Rule 136 of the CGST Rules 2017 directs the Commissioners of CGST/SGST Uttar Pradesh to monitor this order under the supervision of the DGAP by ensuring that the amount profiteered by the Respondent as ordered by this Authority is passed on to all the eligible buyers as per therevised Annexure-14 of the Report dated 30.05.2019. A report in compliance of this order shall be submitted to this Authority by the concerned

Commissioner CGST/CGST within a period of 4 months from the date of receipt of this order through the DGAP.

63. It is also established from the facts of the present case that the Respondent is constructing two projects viz. "Gulmohar Green" as a residential project and "Anandam Square" as the commercial project. It is further established from the record that the Respondent has availed benefit of ITC on the above commercial project also which he has himself admitted during the course of the present proceedings and he has also furnished the details of the area sold and the turnover realised by him on the above project. Therefore, there are sufficient grounds to believe that the Respondent is liable to pass on the benefit of additional ITC to the buyers of the commercial area as per the provisions of Section 171 of the CGST Act, 2017. Accordingly, the DGAP is directed to cause investigation in to the "Anandam Square" project being executed by the Respondent as per the provisions of Rule 133 (5) (a) of the CGST Rules, which states as under:-

"(5) (a) Notwithstanding anything contained in sub-rule (4), where upon receipt of the report of the Director General of Anti-profiteering referred to in sub-rule (6) of rule 129, the Authority has reasons to believe that there has been contravention of the provisions of section 171 in respect of goods or services or both other than those covered in the said report, it may, for reasons to be recorded in writing, within the time limit specified in sub-rule (1), direct the Director General of Anti-profiteering to cause investigation or inquiry with regard to such other goods or services or both, in accordance with the provisions of the Act and these rules.

(b) The investigation or enquiry under clause (a) shall be deemed to be a new investigation or enquiry and all the provisions of rule 129 shall mutatis mutandis apply to such investigation or enquiry."

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

Sd/-
(B. N. Sharma)
Chairman

Sd/-
(J. C. Chauhan)
Member (Technical)

Sd/-
(R. Bhagyadevi)
Member (Technical)

Sd/-
(Amand Shah)
Member (Technical)



Certified Copy
27-11-19
A K. Goel
(Secretary, NAA)

F. No.22011/NAA/31/friends/2019/6555-61

Date: 27.11.2019

Copy To -

1. M/s Friends Land Developer, 17 Kiran Enclave, near Hotel Samrat G.T. Road, Ghaziabad, Uttar Pradesh 201001
2. Shri Rohit Singh, flat no 6B, Tower no 16, Gulmohar Green, Plot no. 95, Loni Road, oppo Hindon Airbase, Mohan Nagar, Ghaziabad-201201
3. 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.
4. Commissioner of Commercial Taxes, Office of the Commissioner, Commercial Tax, U.P. Commercial Tax Head Office Vibhuti Khand, Gomti Nagar, Lucknow (U.P)
5. Chief Commissioner of Central Goods & Services Tax, Meerut Zone opp. CCS University, Mangal Pandey Nagar, Meerut 250 004.
6. Principal Secretary (Town & Country Planning) Government of Uttar Pradesh (Chief Town and Country Planner, Uttar Pradesh), TCG / 1-A-V/5, Vibhuti Khand, Gomti Nagar, Lucknow-226010.
7. Guard File.

Amit