

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

Case No.	63/2019
Date of Institution	30.05.2019
Date of Order	28.11.2019

In the matter of:

1. Sh. Kavi Mahajan, New No. 49, Old No. 42-A, C. P. Ramasamy Road, Abhiramapuram, Chennai-600018.
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 Heeranandani Realtors Pvt. Ltd., 514, Dalamal Towers,
211, F. P. J. Marg, Nariman Point, Mumbai-400021.

Respondent



Quorum:-

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

Present:-

1. None for the Applicant No. 1.
2. Smt. Gayatri, Deputy Commissioner and Shri Sachin Kodnani, Superintendent for the Applicant No. 2.
3. Sh. S. S. Gupta, Consultant, Sh. T. Somasundaram, GM (Accounts) and Sh. Abhishek A. Rastogi, Advocate, for the Respondent.

ORDER

1. The present Report dated 21.02.2019 and the supplementary Reports dated 15.04.2019 and 30.05.2019 have 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 12.06.2018 filed before the Tamil Nadu 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 in respect of purchase of Flat at AMALFI-2603, House of Hiranandani, 5-63 OMR, Egattur, Chennai-600130. The above

Applicant had also alleged that the Respondent had not passed on the benefit of Input Tax Credit (ITC) availed by him by way of commensurate reduction in the price of the above flat. The Tamil Nadu State Screening Committee on Anti-profiteering had prima facie found that the Respondent had not passed on the benefit of ITC to the above Applicant as the same should have been computed against the instalments paid by the Applicant No. 1 against the price of the flat. The above Screening Committee had forwarded the said application with its recommendation to the Standing Committee on Anti-profiteering for further action, in terms of Rule 128 (2) of the above Rules. The aforesaid reference was considered by the Standing Committee on Anti-profiteering, in its meetings held on 07th & 08th August, 2018, wherein it was decided to forward the same to the DGAP to conduct detailed investigation in to the complaint according to Rule 129 (1) of the CGST Rules, 2017.

2. The Applicant had furnished the following documents along with his application:-

- i. Duly filled in Form APAF-1.
- ii. Copy of the Demand letters of both pre-GST & post-GST periods.

3. On receipt of the recommendation from the Standing Committee on Anti-profiteering, the DGAP had issued Notice dated 11.09.2018 under Rule 129 (3) of the above Rules, asking the Respondent to intimate as to whether he admitted that the benefit of ITC had not been passed on

to the above Applicant by way of commensurate reduction in the price of the flat and in case it was so, to suo moto compute the quantum of the same and mention it in his reply to the Notice along with the supporting documents. The Respondent was given opportunity to inspect the non-confidential evidence/information furnished by the above Applicant during the period between 18.09.2018 to 20.09.2018 in accordance with Rule 129 (5) of the above Rules and he availed of the said opportunity and inspected the documents on 24.09.2018. Vide e-mail dated 05.02.2019, the above Applicant was also given opportunity to inspect the non-confidential documents/reply submitted by the Respondent on 11.02.2019 or 12.02.2019. However, the Applicant did not avail of the said opportunity.

4. The DGAP has covered the period from 01.07.2017 to 31.08.2018 during the current investigation. The time limit to complete the investigation was extended by this Authority, vide its orders dated 20.11.2018 and 15.01.2019. in terms of Rule 129 (6) of the above Rules.
5. The DGAP has further stated that the Respondent had submitted replies vide his letters/emails dated 24.09.2018, 25.09.2018, 17.10.2018, 25.10.2018, 26.10.2018, 03.01.2019, 07.01.2019, 15.01.2019, 25.01.2019, 30.01.2019, 31.01.2019, 05.02.2018 and 08.08.2019. The submissions of the Respondent were summed up by the DGAP as under:-

- a) That the Respondent was constructing a project named AMALFI at Chennai where agreements with buyers were

executed for the purpose of selling flats. He was paying Service Tax @ 4.50% on the total agreement value. As regards VAT, it was paid under the gross profit method, i.e., taxable turnover was arrived at by adding 25% margin to the actual purchases. The VAT liability was discharged every month but was recovered only once from the customers on 30th June, 2017. Further, the credit of Service Tax & VAT was availed by the Respondent. The project was approx. 75% complete as on 01.07.2017. Under GST, the Respondent was availing the credit of GST paid on inputs and input services and paying 12% GST on the sale value of the flats.

- b) That the benefit of TRAN-1 credit under Section 140 of the Central Goods and Services Tax Act, 2017 and the benefit available under Section 142 (11) (c) of the said Act were not available to him. Further, the credit of Central Excise Duty paid on inputs was not available prior to GST but the same was admissible under the GST, the benefit of which was to be calculated and passed on to the customers at the time of handing over the possession of the flats after the completion of the project.
- c) That the agreements for sale of flats entered into between the buyers and the Respondent had specified the milestones for recovery of the amount. The invoice could be raised only on achieving the milestone when the credit had been accruing on incurring the expenditure on

construction. Therefore, there was no synchronization between the accrual of credit and the receipt of consideration for service during any period. In Amalfi project, Slab 35 had been cast in November, 2017 and the demand was raised in December, 2017. After Slab 35, as per the schedule of payment, the demand could be raised only after handing over the possession to the customers. The possession had not been given to the customers till the date of investigation and was most likely to be given in May, 2019. Thus, though the credit had accrued in December 2017, the corresponding income was yet to be received. Thus, the credit availed during the post-GST period should exclude Rs. 3,31,12,094/-, i.e., the value of credit availed during December, 2017 to August, 2018.

d) That the Service Tax turnover was Rs. 54,98,31,779/- (2016-17) and Rs. 9,80,26,261/- (April-June, 2017). Therefore, the total Service Tax turnover was Rs. 64,78,58,040/-. The total area of the project was 3,54,025 sq. ft. whereas the turnover was only for 2,67,510 sq. ft. It was submitted that the total credit of Rs. 2,21,13,537/- must be re-computed based on the area relevant to the turnover. Therefore, the credit of Rs. 1,67,09,533/- ($2,21,13,537 * 2,67,510 / 3,54,025$) must be considered for determining the benefit derived by the Respondent. Similarly, in the post-GST regime, the total turnover was Rs. 31,33,60,755/- and

the area relevant to the turnover was 2,85,150 sq. ft. Thus, the total credit of Rs. 4,98,08,556/- must be re-computed after giving effect to the credit mentioned above. Therefore, the credit of Rs. 1,66,96,462/- ($4,98,08,556 - 3,31,12,094$) must be considered for applying the calculation explained in this para. The revised figure of credit would be Rs. 1,34,48,192/- ($1,66,96,462 * 2,85,150 / 3,54,025$).

- e) That the value of pre-GST turnover was Rs. 64,78,48,040/- and It was submitted that the said value also consisted of certain flats which were cancelled in the post-GST regime. It was also submitted that the value of those flats which was included in the turnover of Rs. 64,78,48,040/-, must be excluded. Therefore, Rs. 1,65,75,125/-, i.e., the value of the cancelled flats must be reduced from the pre-GST turnover.
- f) That in terms of Section 17 (2) and Section 17 (3) of the Central Goods and Services Tax Act, 2017, the Respondent would be liable to reverse the proportionate input tax credit to the extent of flats sold after receipt of Completion Certificate (CC), which would have considerable implication on the credit availed by the Respondent. Therefore, the actual benefit could be determined only at the stage of the receipt of CC. The Respondent should pass on the benefit of ITC once the CC has been received.

6. The Respondent had also submitted the following documents/information to the DGAP vide his above mentioned letters/e-mails during the course of the investigation:-

- (a) Copies of GSTR-1 Returns for the period from July, 2017 to August, 2018.
- (b) Copies of GSTR-3B Returns for the period from July, 2017 to August, 2018.
- (c) Copies of VAT & ST-3 Returns for the period from April, 2016 to June, 2017.
- (d) Electronic Credit ledger for the period from July, 2017 to August, 2018.
- (e) Copies of all demand letters, receipts and sale agreement/ in the name of the Applicant Sh. Kavi Mahajan.
- (f) Details of applicable Tax rates- pre-GST and post-GST.
- (g) Balance Sheet for the FY 2016-17.
- (h) Copy of project report submitted to RERA.
- (i) Details of taxable turnover and input tax credit for the project "AMALFI".
- (j) List of home buyers in the project " AMALFI".

7. The DGAP has also stated that all the documents placed on record were carefully examined by him and he had found that the main issues for determination were whether there was reduction in the rate of tax or benefit of ITC on the supply of construction service by the

Respondent after implementation of the GST w.e.f. 01.07.2017 and in case it was so, whether the Respondent had passed on the above benefits to the home buyers as per the provisions of Section 171 of the CGST Act, 2017 or not.

8. The DGAP has further stated that the Respondent, vide his letter dated 17.10.2018 had submitted the copies of the demand letters, the agreement and the payment schedule for the flat booked by the Applicant, the details of which are mentioned in Table-'A' below:-

Table-'A'

(Amount in Rs.)

S. No.	Payment Stages	Bill Date	Due Date	BSP	Service Tax including SBC & KKC	TN VAT	GST	Total	Actual Payment
1	Billing Earnest	5/7/2016	07-05-2016	2,009,400	87,409	-	-	2,096,809	2,096,809
2	Billing Earnest	5/7/2016	07-05-2016	200,000	8,700	-	-	208,700	208,700
3	Billing Slab 10	5/31/2016	29-06-2016	158,095	6,877	-	-	164,972	164,972
4	Billing Due on or be	6/6/2016	06-06-2016	3,464,339	155,896	-	-	3,620,235	3,620,235
5	Billing Due on or be	6/6/2016	06-06-2016	158,095	7,114	-	-	165,209	165,209
6	Billing Slab 11	6/15/2016	14-07-2016	158,095	7,114	-	-	165,209	165,209
7	Billing Slab 12	7/11/2016	09-08-2016	158,095	7,114	-	-	165,209	165,209
8	Billing Slab 13	7/27/2016	25-08-2016	158,095	7,114	-	-	165,209	165,209
9	Billing Slab 14	8/17/2016	15-09-2016	158,095	7,114	-	-	165,209	165,209
10	Billing Slab 15	9/7/2016	06-10-2016	158,095	7,114	-	-	165,209	165,209
11	Billing Slab 16	9/26/2016	25-10-2016	158,095	7,114	-	-	165,209	165,209
12	Billing Slab 17	10/14/2016	12-11-2016	158,095	7,114	-	-	165,209	165,209
13	Billing Slab 18	11/7/2016	06-12-2016	158,095	7,114	-	-	165,209	165,209
14	Billing Slab 19	11/25/2016	24-12-2016	158,095	7,114	-	-	165,209	165,209
15	Billing Slab 20	1/5/2017	03-02-2017	158,095	7,114	-	-	165,209	165,209
16	Billing Slab 21	1/31/2017	01-03-2017	158,095	7,114	-	-	165,209	165,209
17	Billing Slab 22	2/22/2017	23-03-2017	158,095	7,114	-	-	165,209	165,209
18	Billing Slab 23	3/18/2017	16-04-2017	158,095	7,114	-	-	165,209	165,209
19	Billing Slab 24	4/3/2017	02-05-2017	158,095	7,114	-	-	165,209	165,209
20	Billing Slab 25	4/29/2017	28-05-2017	158,095	7,114	-	-	165,209	165,209
21	Billing Slab 26	5/31/2017	29-06-2017	158,095	7,114	-	-	165,209	165,209
22	Billing Slab 27	7/29/2017	27-08-2017	158,095	-	-	18.9	177,066	177,066

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23	Billing Slab 28	8/1/2017	30-08-2017	158,095	-	-	18,971	177,066	177,066
24	Billing Slab 29	8/4/2017	02-09-2017	158,095	-	-	18,971	177,066	177,066
25	Billing Slab 30	8/19/2017	17-09-2017	158,095	-	-	18,971	177,066	177,066
26	Billing Slab 31	8/31/2017	29-09-2017	158,095	-	-	18,971	177,066	177,066
27	Billing Slab 32	9/26/2017	25-10-2017	158,095	-	-	18,971	177,066	177,066
28	Billing Slab 33	10/13/2017	11-11-2017	158,095	-	-	18,971	177,066	177,066
29	Billing Slab 34	11/21/2017	20-12-2017	158,095	-	-	18,971	177,066	177,066
30	Billing Slab 35	12/1/2017	30-12-2017	158,095	-	-	18,971	177,066	177,066
31	Billing TN VAT	6/23/2017	7/31/2017	-	-	197,000	-	197,000	197,000

9. The DGAP has further stated that para 5 of Schedule-III of the Central Goods and Services Tax Act, 2017, defining activities or transactions which shall be treated neither as a supply of goods nor a supply of services, reads as "Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building". Further, Clause (b) of para 5 of Schedule II of the Central Goods and Services Tax Act, 2017 reads as "(b) construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier". In the light of these provisions, the DGAP has contended that the ITC pertaining to the units which were under construction but not sold was provisional ITC that may be required to be reversed by the Respondent, if such units would remain unsold at the time of issue of CC, in terms of

Section 17 (2) & Section 17 (3) of the Central Goods and Services Tax Act, 2017 which read as under:-

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.

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, 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 the prospective buyers by considering the 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 credit of Service Tax paid on input services and credit of VAT paid on the purchase of inputs. However, the 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 Respondent was collecting one-time VAT from his customers at the time of handing over possession of apartments and discharging his output VAT liability on deemed 25% 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. Therefore, the credit of VAT paid on the inputs and the VAT turnover were not considered for computation of the ITC ratio to the turnover for the pre-GST period. Further, post-GST, the Respondent could avail ITC of GST paid on inputs and input services including the sub-contracts. From the information submitted by the Respondent, duly verified from the GSTR-1 and GSTR-3B Returns for the period from July, 2017 to August, 2018, the details of the ITC availed by him and his taxable turnover for the project "AMALFI" during the pre-GST (April, 2016 to June, 2017) and post-GST (July, 2017 to August, 2018) periods the ratio of CENVAT/ITC to turnover was furnished by the DGAP as per the Table-C given below:-



Table-'C'

(Amount in Rs.)

S. No.	Particulars	April, 2016 to March, 2017	April, 2017 to June, 2017	Total (Pre-GST)	July, 2017 to August, 2018 (post-GST)
(1)	(2)	(3)	(4)	(5)=(3)+(4)	(6)
1	CENVAT of Service Tax Paid on Input Services (A)	12,671,905	4,041,472	16,713,377	-
2	Input Tax Credit of GST Availed (B)	-	-	-	49,808,556
3	Total Turnover as per Home buyers list (C)			647,128,251	317,525,945
4	Total Saleable Area (sq. ft.) (D)			354,025	354,025
5	Area Sold relevant to turnover (E)			265,540	284,335
6	Relevant CENVAT/Input Tax Credit (F) = [(A)*(E)/(D)] or [(B)*(E)/(D)]			12,536,036	40,003,717
7	Ratio of CENVAT/ Input Tax Credit to Turnover [(G)=(F)/(C)]			01.94%	12.60%

11. The DGAP has also submitted from the above Table-'C' that the ITC as a percentage of the total turnover that was available to the Respondent during the pre-GST period (April, 2016 to June, 2017) was 01.94% and during the post-GST period (July, 2017 to August, 2018), it was 12.60% which clearly confirmed that post-GST, the Respondent has been benefited from additional ITC to the tune of 10.66% [12.60% (-) 01.94%] of the turnover.
12. The DGAP has further submitted that the issue of profiteering has been examined by comparing the applicable tax rate and the available ITC for the pre-GST period (April, 2016 to June, 2017) when Service Tax @ 4.5% and one-time VAT on deemed value addition were payable with the post-GST period (July, 2017 to August, 2018) when the GST rate was 12%, fixed vide Notification No.11/2017-Central Tax (Rate), dated 28.06.2017. On the basis of the figures contained in Table-'C' above, the ITC availed/available during the pre-GST and the

post-GST periods, the recalibrated base price on the basis of benefit of ITC post-GST and the excess collection/realization by the Respondent (profiteering) have been tabulated by the DGAP as is given in Table-'D' below:-

Table-'D'

(Amount in Rs.)

S. No.	Particulars		Pre-GST	Post- GST
1	Period	A	April, 2016 to June, 2017	July, 2017 to June, 2018
2	Output tax rate (%)	B	4.50%	12.00%
3	Ratio of CENVAT/ Input Tax Credit to Taxable Turnover as per Table - C above (%)	C	1.94%	12.60%
5	Increase in input tax credit availed post-GST (%)	D= 12.60% less 1.94%	-	10.66%
6	<u>Analysis of Increase in input tax credit:</u>			
7	Base Price collected during July, 2017 to August, 2018	E		31,75,25,945
8	Less: Units cancelled and amount refunded	F		
9	Net Base Price collected during July, 2017 to August, 2018	G=E-F		31,75,25,945
10	GST Collected @ 12% over Basic Price	H= G*12%		3,81,03,113
11	Total Demand collected	I=H+G		35,56,29,058
12	Recalibrated Basic Price	J= G*(1-D) or 89.34% of G		28,36,77,679
13	GST @12%	K= J*12%		3,40,41,322
14	Commensurate demand price	L= J+K		31,77,19,001
15	Excess Collection of Demand or Profiteering Amount	M= I-L		3,79,10,058

13. The DGAP has also observed from Table-'D' that the additional ITC of 10.66% of the turnover should have resulted in commensurate reduction in the base price as well as cum-tax price. Therefore, in terms of Section 171 of the Central Goods and Services Tax Act, 2017, the benefit of the additional ITC was required to be passed on to the recipients.

14. On the basis of the aforesaid CENVAT/ITC availability pre and post-GST and the details of the amount collected by the Respondent from the Applicant and other home buyers during the period from 01.07.2017 to 31.08.2018, the amount of benefit of ITC not passed on or in other words, the profiteered amount has been quantified by the DGAP as Rs. 3,79,10,058/- which included GST @ 12%, on the base profited amount of Rs. 3,38,48,266/-. The home buyer and Unit No. wise break-up of this amount has been given in Annexure-22 of the DGAP's Report. This amount was inclusive of Rs. 1,69,878/- (including GST @ 12% on the base amount of Rs. 151,676/-) which was the profiteered amount in respect of the Applicant No. 1, mentioned at Serial No. 93 of Annexure-22 of the Report. It was also observed that the Respondent had supplied the construction services in the State of Tamil Nadu only.
15. The DGAP has further stated that the Respondent has sold 139 flats out of which 137 home buyers have made payments in the post-GST period till 31.08.2018. The above profiteering has been computed in respect of those 137 flats where payments have been received in the post-GST period. The profiteering in respect of the remaining 2 home buyers would be calculated when payments would be received from them, by taking into account the benefit of proportionate ITC.
16. The DGAP has also claimed that the benefit of additional ITC of 10.66% of the turnover has, in fact, accrued to the Respondent and the same was required to be passed on to the Applicant and other recipients. Thus, the Respondent has contravened the provisions of

Section 171 of the Central Goods and Services Tax Act, 2017 inasmuch as the additional benefit of ITC @ 10.66% of the turnover (base price) received by the Respondent during the period from 01.07.2017 to 31.08.2018, has not been passed on to the above Applicant and the other recipients. On this account, the Respondent has realized an additional amount to the tune of Rs. 1,69,878/- from the Applicant No. 1 which included both the profiteered amount @ 10.66% of the turnover (base price) and 12% GST on the said profiteered amount. Further, the investigation has revealed that the Respondent has also realized an additional amount of Rs. 3,77,40,180/- (Rs. 3,79,10,058/- (-) Rs. 1,69,878/-) which included both the profiteered amount @ 10.66% of the turnover (base price) and GST on the said profiteered amount, from other recipients as well who were not Applicants in the present proceedings. These recipients were identifiable as per the documents provided by the Respondent giving the names and addresses along with Unit No. allotted to such recipients. Therefore, this additional amount of Rs. 3,77,40,180/- was required to be returned to such eligible recipients.

17. The DGAP has also stated that the present investigation has covered the period from 01.07.2017 to 31.08.2018. 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 the stage, when the construction of the project was yet to be completed. He has further stated that the provisions of Section 171 (1) of the Central Goods and Services Tax

Act, 2017 requiring that "a reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices", have been contravened by the Respondent in the present case.

18. The above Report was considered by the Authority in its meeting held on 26.02.2019 and it was decided that the Applicants and the Respondent be asked to appear before the Authority on 13.03.2019. The Respondent was issued notice on 27.02.2019 to explain why the above Report of the DGAP should not be accepted and his liability for violating the provisions of Section 171 of the CGST Act, 2017 should not be fixed along with imposition of penalty as per Section 29, 122-127 of the above Act read with Rule 21 & 133 of the CGST Rules, 2017 and his registration under the above Act should also not be cancelled. During the course of the hearings no one appeared for the Applicant No. 1, the DGAP was represented by Smt. Gayatri, Deputy Commissioner and Sh. Sachin Kodnani, Superintendent and the Respondent was represented by Sh. S. S. Gupta, Consultant, Sh. T. Somasundaram, GM (Accounts) and Sh. Abhishek A. Rastogi, Advocate. The Respondent has filed his written submissions on 13.03.2019, 16.04.2019, 10.05.2019 and 20.05.2019. The main issues raised by the Respondent in his above submissions are mentioned in the subsequent paras.

19. The Respondent has submitted that the method of calculation adopted by the DGAP while computing the profiteering amount in Table-D based on the computations made in Table-C was incorrect. He has

also submitted that the DGAP in para 21 of the Report had stated that the Respondent was entitled to 1.94% CENVAT Credit as compared to the turnover during the pre-GST period and the ratio on the same basis was 12.60% during the post-GST period, hence the higher ratio has resulted in profiteering. He has further submitted that on the basis of this calculation, the DGAP has computed profiteering amount of Rs. 3.79 Crore which was not correct as the method adopted by the DGAP could not directly be applied to the construction industry since the manner of accrual of credit and raising of demand on the customers was different than the general industries. He has also stated that in the construction industry, the credit may accumulate in a particular period but the tax liability with respect to the same may arise in a different period as the construction activity went on gradually which resulted into accrual of CENVAT credit, however, demand notices for the same were raised as per the milestones mentioned in the agreement. Unless the milestone was achieved, the builder could not raise demand on the customer, however, CENVAT credit would still accrue to the builder. He has also furnished the details of payment as per the agreement executed with the buyers as per which the milestones specified were as follows:-

Stage	Description	Percentage
1	Billing Earnest	20
2	Foundation	10
3	Lower Basement Slab	5
4	Middle Basement Slab	2.5
5	Upper Basement Slab	2.5



6	36 equal installment – slab wise (ending at slab 35)	55
7	Billing on possession	5
	TOTAL	100

The Respondent has also contended that after slab 35 was cast, demand could be raised only on possession, however, credit had been accruing to him for the construction work carried out between slab 35 and possession. He has further contended that the finishing activity had to be carried out before possession demand which could result into accrual of huge credit, thus, the mechanism of comparing the credit during the period with the turnover could not provide the correct picture of profiteering since the billing and credit did not accrue simultaneously.

20. The Respondent has also submitted that the agreement for sale of premises entered into between the buyer and the Respondent specified the milestone for recovery of the amount and the invoice could be raised only on achieving milestones, whereas the credit accrued on incurring of expenditure on construction. Therefore, there was no synchronization between the accrual of credit and the value of taxable service during any period. He has further submitted that due to this reason, the percentage of utilization of credit during the period would also vary which would be evident from bifurcation of the post-GST period into 2 parts, i.e., July, 2017 to March, 2018 and April, 2018 to August, 2018. The bifurcated Table-C pertaining to post-GST period

of the Report of DGAP has been furnished by the Respondent as follows:-

Sr. No.	Particulars	July 2017 to March 2018	Apr'18 to Aug'18	Total (Post GST)
1	Input tax credit of GST availed (A)	4,03,16,285	94,92,271	4,98,08,556
2	Total Taxable Turnover (B)	29,11,32,716	2,63,93,229	31,75,25,945
3	Total saleable area (C)	3,54,025	3,54,025	3,54,025
4	Area sold relevant to turnover (D)	2,74,930	2,84,335	2,84,335
5	Relevant Credit – (E) = A*D/C	3,13,08,965	76,23,713	4,00,03,717
6	Ratio of Input Tax Credit Post GST (F=E/B)	10.75%	28.89%	12.60%

The Respondent has also claimed from above Table that the ratio of availment of ITC to the taxable turnover for the period from July, 2017 to March, 2018 was 10.75% and for the period from April, 2018 to August, 2018 was 28.89% whereas the average percentage of availment had been shown in Table-C as 12.60%. Thus, the variation in the utilization of credit between the two periods (both falling under GST regime) itself substantiated that there was no synchronization of accrual of credit with raising of demand of recovery amount from the customer. He has further claimed that in the present case, the slab No. 35 was cast in December, 2017 and the demand was also raised in December, 2017, however, after slab 35, as per the schedule of payment, the demand on the customer could be raised only on possession which has not been given to the customers as on the date of submissions. He has also stated that therefore, although the expenditure was incurred during December, 2017 to August, 2018 however, the demand could not be raised in August, 2018 as the

milestone was not achieved. He has further stated that the total credit accruing with respect to the possession demand had been taken in the calculation in Table-D, however there was no corresponding taxable turnover i.e. no demand was raised on customers for possession, thus, credit has accrued and availed but corresponding income has not accrued and billed. Accordingly, the credit from December, 2017 to August, 2018 needed to be reduced from the post-GST credit in the Table-C for computing the credit to the turnover ratio. He has therefore, submitted that the credit availed figure during the post-GST period amounting to Rs. 3,31,12,094/- must be reduced in Table-C and as per his calculations, the revised Table-C would be as follows:-

Particular	Pre-GST	Post-GST
Net Cenvat / ITC (after reducing Rs. 3.31 Crore) (A)	1,67,13,377	1,66,96,462
Total Saleable Area of the project (in sq. ft.) (B)	3,54,025	3,54,025
Total Area Sold Relevant to Taxable Turnover (C)	2,65,540	2,84,335
Relevant Cenvat/ITC (D) = (C*A/B)	1,25,36,036	1,34,09,755
Taxable Turnover (E)	64,71,28,251	31,75,25,945
Ratio (F) = (D/E*100)	1.94%	4.22%

21. The Respondent has also argued that the DGAP had computed the profiteered amount of ₹ 3.79 crores which included the base price as well as 12% GST on the same which amounted to ₹ 40,61,792/-. It was also submitted that although the Respondent did not accept the

calculation, but even if the DGAP's Report was accepted, the excess collection made by the Respondent was only ₹ 3.38 crores as the excess GST collected by him had duly been deposited with the Government and the Respondent had not retained the same and hence, the same could not be considered as profiteered amount to be passed on to the customers.

22. It was further submitted by the Respondent that the credit figures for the post-GST period in Table-C may again be reduced after receiving the CC of the project as per Schedule-III read with clause (b) of para 5 of Schedule-II and Section 17 (3) of the CGST Act, 2017. Thus, the Respondent would be liable to reverse the proportionate ITC to the extent of flats sold after receipt of CC. Hence, the credit which had been availed during the period from July, 2017 to August, 2018 would also proportionately be reversed by the Respondent, which could not be computed at the time of submissions.
23. The Respondent has also pleaded that the GST Council in its 33rd meeting had recommended that w.e.f. 1st April, 2019, in case of residential flats (other than affordable housing projects), GST would be payable at the rate of 5% without benefit of ITC but the notification regarding the same has not been issued yet. However, as per the press release uploaded on the website of CBIC on 24.02.2019 there would not be any ITC available to the Respondent post 1st April, 2019 and hence, the actual benefit available to the Respondent could be computed only after 1st April, 2019.



24. It has further been pleaded by the Respondent that if option was granted to avail ITC after 1st April, 2019 and pay tax at full rate, the benefit of credit arising to the Respondent could be computed only after the end of the project i.e. on receipt of CC and the same would be passed on to the customers at that point of time.
25. In his submissions dated 16.04.2019 the Respondent has reiterated the submissions which were made by him on 13.03.2019 and further added that the credit could be available to a recipient when the following four conditions of Section 16 of the above Act were complied with:-
- a) He is in a possession of tax invoice or debit note issued by the supplier.
 - b) He has received the goods or services or both.
 - c) The tax in respect of supply has been actually paid by the supplier.
 - d) The supplier has filed the return under Section 39 of the CGST Act, 2017.

The Respondent has also stated that the supplier was required to file Returns in Form GSTR-3B and Form GSTR-1 and the details of supply furnished by him were reflected in Form GSTR-2A of the recipient. He has further stated that he had availed the credit in Form GSTR-3B on the assumption that all the suppliers had paid the taxes and filed the return, however, there may be a possibility that the suppliers have not paid taxes in respect of the supplies on which credit has been availed.

by the Respondent and hence the same may get disallowed to the Respondent and therefore, this fact needed to be considered while computing the benefit which has accrued to the Respondent.

26. The Respondent has also submitted the details of total saleable area, area unsold as per invoices and number of flats sold till August 2018 as follows:-

Particulars		Flats		Area	
		No.	% with respect to total	Sq. mt.	% with respect to total
Pre-GST - Sold	Prior to April 2016	90	51.43	1,86,155	52.58
	April 2016 to June 2017	38	21.71	79,385	22.42
Post-GST - Sold	July 2017 to November 2017 (prior to last slab milestone)	2	1.14	3,940	1.11
	December 2017 to August 2018	9	5.14	18,350	5.18
	September 2018 to February 2019	4	2.29	8,235	2.33
Unsold Flats		32	18.29	57,960	16.37
Total Flats		175	100.00	3,54,025	100.00

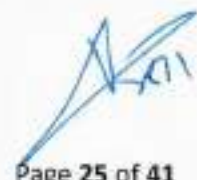
27. The Respondent has further submitted his pleadings in respect of accounting of 25% VAT and stated that Section 5 of the Tamil Nadu Value Added Tax Act, 2006 provided for the levy of tax on transfer of goods involved in the works contract. The said Section also provided that the VAT needed to be levied on the transfer of goods involved in the works contract by determining the taxable value which may be calculated in such manner as may be prescribed. Further, the tax

needed to be paid at the rates as specified in the First Schedule. The explanation to the above Section further provided that where any works contract involved more than one item of work, the rate of tax should be determined separately for each such item of work. The Rules provided that the taxable turnover needed to be arrived by deducting the following amounts from the total amount:-

- All amounts involved in goods in respect of export or import or in course of interstate trade or commerce.
- All amounts involved in goods which were exempt from levy of VAT.
- All amounts paid to the sub-contractors as consideration for execution of works contracts.
- All amounts towards labour charges and other charges not involving any transfer of property in goods, actually incurred in connection with the execution of works contract.

The Respondent has also stated that the valuation mechanism provided that the cost of the goods plus the profit of the assessee was the value on which the VAT was payable. In the present case, the profit margin of the Respondent was 25%. Thus, the Respondent had loaded 25% on the cost of goods and paid VAT by availing the credit.

28. The Respondent has also submitted the list of the finished projects executed by him along with their completion month as follows:-



	Project	Month of Completion
(i)	Seawood	March 2012
(ii)	Pinewood	March 2012
(iii)	Brentwood	March 2012
(iv)	Greenwood	March 2013
(v)	Bridgewood	March 2014
(vi)	Birchwood	March 2013
(vii)	Oceanic	March 2014
(viii)	Edina	September 2016
(ix)	Bayview	June 2017
(x)	Sinovia	June 2017

29. The details of other projects which were on-going as on 1st July, 2017 were submitted by the Respondent as under:-

Sr. No.	Particulars	Tiana	Anchorage
1	Total area of the project	3,10,860	4,76,925
2	Area sold prior to GST	2,23,795	61,078
3	Area sold post GST	48,680	78,085
4	Total flats of the project	264	245
5	No. of Flats sold prior to GST	193	28
6	No of Flats sold post GST	38	40
7	If Yes, date of OC or if No date of completion mentioned in RERA	Jun' 2020	Sep' 2023
8	Whether OC received? (Y/N)	N	N

30. The Respondent has also submitted the details of the ITC availed after August, 2018 till the date of filing of submissions in respect of Amalfi project, as reflected in the GSTR-3B for the month of September, 2018 to February, 2019 as follows:-

Sr. No.	Month	Amount
1	September 2018	6,04,964
2	October 2018	29,87,735
3	November 2018	34,74,662
4	December 2018	16,00,395
5	January 2019	12,79,374
6	February 2019	7,44,532

31. In his submissions dated 10.05.2019 the Respondent has reiterated the submissions which were made by him on 13.03.2019 and 16.04.2019. Further the Respondent has submitted that he has duly passed on 2.28% benefit to the eligible customers and a total benefit of Rs. 81,08,343 has been passed on. The calculation of the amount is as follows:-

$$\begin{aligned}
 & \text{Rs. } 31,75,25,945 * 2.28\% & = & \text{Rs. } 72,39,592 \\
 & 12\% \text{ GST on above} & = & \text{Rs. } 8,68,751 \\
 & \text{Total} & = & \text{Rs. } 81,08,343
 \end{aligned}$$

32. The Respondent has also contended that the above computation of Rs. 81.08 lakhs included customers who had booked flats after 1st July, 2017 i.e. in the post-GST period. It was further contended that since the flats have been booked after the GST had been implemented there was no additional benefit of GST which was to be passed on to such customers. The agreements entered into with these customers had fixed value towards sale of flats excluding the GST. The Respondent has duly charged them 12% GST as per the agreed

terms. Hence, there was no benefit of pre-GST regime which would accrued to such customers. However, the Respondent has passed on the benefit of 2.28% even to those customers who have booked flats in the post-GST regime.

33. The submissions of the Respondent dated 13.03.2019, 16.04.2019, 10.05.2019 and 20.05.2019 were forwarded to the DGAP for his Report. The DGAP vide his supplementary Reports dated 15.04.2019 and 30.05.2019 has replied on the issue of incorrect method adopted to quantify the profiteered amount as the credit and the taxable values did not synchronize in the same month or the same period. The DGAP has stated that he has considered a period of 1 Year and 3 months in the pre-GST period and a period of 1 year and 2 months in the post-GST period to neutralize the effect of monthly variations in the ITC and taxable turnovers.

34. We have carefully considered all the submissions filed by the Applicants, the Respondent and the other material placed on record and find that the Applicant No. 1, vide his complaint dated 12.06.2018 had alleged that the Respondent was not passing on the benefit of ITC to him in spite of the fact that he was availing ITC on the purchase of the inputs at the higher rates of GST which had resulted in benefit of additional ITC to him and was also charging GST from him @12%. The above complaint was forwarded by the Tamil Nadu State Screening Committee to the Standing Committee on Anti-Profiteering for further action. This complaint was examined by the Standing Committee in its meetings held on 07 & 08.08.2018 and was forwarded to the DGAP for investigation who vide his Report dated

21.02.2019 has found that the ITC as a percentage of the total turnover which was available to the Respondent during the pre-GST period was 1.94% and during the post-GST period this ratio was 12.60% as per the Table-C mentioned above and therefore, the Respondent has benefited from the additional ITC to the tune of 10.66% (12.60% - 1.94%) of the total turnover which he was required to pass on to the flat buyers of this project. The DGAP has also found that the Respondent has not reduced the basic prices of his flats by 10.66% due to additional benefit of ITC and by charging GST at the increased rate of 12% on the pre-GST basic price, he has contravened the provisions of Section 171 of the CGST Act, 2017. The DGAP 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. 3,79,10,058/- which included 12% GST on the basic profiteered amount of Rs. 3,38,48,266/-. The DGAP has also intimated that this amount of profiteering also included the profiteered amount of Rs. 1,69,878/- including 12% GST on the base amount of Rs. 1,51,676/- in respect of 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 and the profiteered amount vide Annexure-22 attached with the Report.

35. The Respondent has claimed that the method of calculation adopted by the DGAP while computing the profiteered amount in Table-D based on the computations made in Table-C was incorrect. Perusal of Table-C shows that the ratios of CENVAT/ITC to turnover for the pre and post-GST periods have been computed on the basis of the

Returns filed by the Respondent during the pre and post-GST periods which have been duly verified by the DGAP. Therefore, the Respondent cannot contend that the above Table is incorrect. The computations made in Table-D are also based on the figures mentioned in Table-C and the information supplied by the Respondent in respect of the turnover and the area sold by him and hence, he cannot find fault with the above Table. It is also clear from the above Tables that the additional benefit of ITC can only be calculated by comparing the credit of CENVAT availed by the Respondent during the pre-GST period with the ITC availed by him during the post-GST period to calculate the benefit which should be passed on to the buyers as per the provisions of Section 171 (1) of the above Act. The mathematical methodology applied by the DGAP while computing the above ratios and benefit as per the above Tables is correct and the same can be relied upon.

36. The Respondent has also claimed that the method adopted by the DGAP to compute the profiteered amount could not be applied to the construction industry since the manner of accrual of credit and raising of demand on the customers was different than the general industries. In this connection it would be appropriate to mention that the benefit of ITC is required to be passed on as soon as the Respondent uses the ITC to discharge his GST output liability which he is doing every month and accordingly, he is required to pass on the above benefit every month. The Respondent cannot claim that since there was no synchronization between the accrual of ITC and the instalments to be

realised from the buyers he cannot pass on the benefit. The Respondent is under legal obligation to pass on the above benefit as per the provisions of Section 171 (1) of the above Act and therefore, he has to pass it. He cannot be allowed to wait till there is no mismatch between the above two parameters as they would match only at the time of completion of the project. In case the Respondent proposes to pass on the above benefit at the time of the closure of the project he should also avail the benefit of ITC at that time since, he cannot apply different yardsticks while availing the benefit himself and while passing it on to his recipients. The Respondent cannot use the amount of benefit in his business at the expense of the flat buyers more so when he is not required to pay the above benefit from his own money. The Respondent has sufficient leverage in adjusting the amount of above benefit while passing on the same periodically in case there is more or less passing on of the above benefit. Therefore, the above claim of the Respondent is incorrect.

37. The Respondent has also submitted that as per his computations mentioned in the Table supra the ratio of availment of ITC to the taxable turnover for the period from July, 2017 to March, 2018 was 10.75% and for the period from April, 2018 to August, 2018 was 28.89% whereas the average percentage of availment had been shown in Table-C as 12.60% and hence, there was no synchronization of accrual of credit with raising of demand of recovery amount. The above claim of the Respondent is not correct as the ratio of ITC to turnover computed by the Respondent exactly matches with the ratio

of 12.60% computed by the DGAP in Table-C and therefore, the above claim of the Respondent is far-fetched and hence the same cannot be accepted.

38. He has further submitted that the total credit accruing with respect to the possession demand has been taken in the calculation in Table-D, however there was no corresponding taxable turnover, accordingly, the credit availed of Rs. 3,31,12,094/- must be reduced in Table-C and therefore, the ratio of CENVAT/ITC to turnover for the pre and post-GST period would be 1.94% and 4.22% as per the Table supra instead of 1.94% and 12.60%. In this connection it would be pertinent to mention that it is clear from the perusal of Table-C above that the amount of ITC of Rs. 3,31,12,094/- has been included while calculating the post-GST ratio in the Table-C whereas the above ratio has been computed by the Respondent by excluding the above amount of ITC on the ground that there was no corresponding turnover. However, the claim made by the Respondent on the above ground is not correct as the Respondent has availed the above ITC while discharging his output tax liability and has not waited till the turnover would be realised by the Respondent and hence the above amount cannot be reduced from the ITC availed post-GST.

39. The Respondent has also stated that he had deposited the excess GST collected by him with the Government and he had not retained the same and hence, the same could not be considered as profiteered amount. However, it would be relevant to state here that the Respondent has not passed on the benefit of additional ITC to his

customers which he was legally bound to pass on by commensurate reduction in the prices of the flats and has charged more price than what he could have charged. The Respondent has not only charged more price but has also compelled his customers to pay more GST on the extra price charged illegally by him. Therefore, the above extra price as well as the additional GST charged by the Respondent amounts to the denial of benefit to be passed on. There was no legal obligation on the Respondent to realise the additional GST from the flat buyers and by doing so he has not only defeated the purpose of the concession given by the Central and the State Govt. from their own tax revenue but has also made the house buying less affordable to his customers. Therefore, the above contention of the Respondent is fallacious and hence the same is not tenable.

40. The Respondent has further stated that the ITC considered during the post-GST period in Table-C might be required to be reversed as soon as the CC was received as per the provisions of Schedule-III read with clause (b) of para 5 of Schedule-II and Section 17 (3) of the CGST Act, 2017. In this regard it would be appropriate to mention that the CC has still not been obtained by the Respondent and hence there is no question of reversal of the ITC at this stage. Moreover, as per the present proceedings no benefit is proposed to be passed on in respect of those flats which have not been sold yet and the ITC in respect of these flats would be available with the Respondent in case it is required to be reversed at the time of issue of CC. Hence, the above argument of the Respondent is untenable.

41. The Respondent has also submitted that GST would be payable at the rate of 5% without benefit of ITC w.e.f. 01.04.2019 and hence the actual benefit of ITC could be computed only after 1st April, 2019. It is apparent from the perusal of Notification No. 03/2019-Central Tax (Rate) dated 29.03.2019 that 5% rate of tax would be applicable only prospectively from 01.04.2019 and all the additional ITC which the Respondent has availed till 31.03.2019 would have to be passed on by him to his customers. The above benefit can also not be delayed till the completion of the project even if the benefit of ITC is allowed by charging full rate of tax as the same is required to be passed on every month. Hence, there is no force in the argument advanced by the Respondent.
42. The Respondent has further submitted that he would be entitled to the ITC only if the four conditions mentioned in Section 16 of the CGST Act, 2017 are complied with one of which requires that his suppliers should have deposited the GST which they had charged from him on the supplies made to him and in case they have not deposited the GST his ITC would be disallowed. The above contention of the Respondent is hypothetical as the suppliers are required to deposit the GST charged by them regularly and in case they default they are liable for penalty and interest. The Respondent is also required to reconcile his supplies regularly with his suppliers. Therefore, the above contention of the Respondent is untenable.
43. The Respondent has also averred that he was discharging his VAT liability by adding 25% profit on the purchase value of the inputs as per the provisions of Section 5 of the Tamil Nadu Value Added Tax Act,

2006 and was claiming ITC. However, the DGAP in his Report dated 21.02.2019 has stated that the Respondent was collecting VAT only once at the time of handing over the possession of the flats and was discharging his VAT output liability by adding 25% in the purchase value of the inputs and hence, there was no direct connection between the turnover reported by the Respondent in his VAT Returns filed during the pre-GST period and the actual consideration received by him from his customers and therefore, the DGAP has not taken in to account the ITC available on the inputs and the VAT turnover for computation of the ratio of ITC to turnover in Table-C supra. The above claim of the DGAP is reasonable and justified as there is no relation between the ITC available to the Respondent on the deemed value of purchases and the turnover reflected in his pre-GST Returns and also that the Respondent was not charging VAT from his customers regularly and was charging it only once at the time of handing over possession of the flats and hence the credit of VAT paid on inputs and the VAT turnover has rightly not been considered by the DGAP for computation of the ratio of ITC to the turnover for the pre-GST period.

44. The Respondent has also furnished details of other projects which were going on as on 1st July, 2017 as under:-

Sr. No.	Particulars	Tiana	Anchorage
1	Total area of the project	3,10,860	4,76,925
2	Area sold prior to GST	2,23,795	61,078
3	Area sold post GST	48,680	78,085
4	Total flats of the project	264	245
5	No. of Flats sold prior to GST	193	28
6	No of Flats sold post GST	38	40
7	If Yes, date of OC or if No date of completion mentioned in RERA	Jun' 2020	Sep' 2023
8	Whether OC received? (Y/N)	N	N

45. The Respondent has also claimed that he has duly passed on 2.28% benefit to the 137 eligible customers and total benefit of Rs. 81,08,343 has been passed on by him as per the computation made by him in para supra and as per Annexure-1 attached to his submissions dated 10.05.2019. However, the computation of benefit @ 2.28% is not correct as the same has been calculated after deducting an amount of Rs. 3,31,12,094/- of ITC on the ground that no corresponding turnover was realised against the above credit. As has been discussed in para supra the above amount cannot be reduced as it has already been availed by the Respondent and hence the above claim of the Respondent is not tenable. The Respondent has also not supplied any reliable and cogent proof that the above benefit has been received by the eligible buyers nor his claim has been verified by the DGAP and hence the above claim of the Respondent cannot be accepted.
46. The Respondent has also contended that he was not required to pass on the benefit of ITC to the buyers who had purchased the flats after coming in to force of the GST. However, it is made clear that the Respondent is required to recalibrate the prices of the flats which he would sell post-GST keeping in view the availability of ITC.



47. The Respondent has also given details of the above project stating that the total number of flats was 175 having total area of 3,54,025 sq. ft. out of which 128 flats having area of 2,65,540 sq. ft. had been sold during the pre-GST period. 15 flats having area 30,525 sq. ft. have been sold after implementation of GST. Further, 32 flats having area of 57,960 sq. ft. had remained unsold.
48. It is established from the perusal of the above facts that the Respondent has benefited from the additional ITC to the extent of 10.66% of the turnover during the period from July, 2017 to August, 2918 and hence the provisions of Section 171 of the CGST Act, 2017 have been contravened by the Respondent as he has not passed on the above benefit to his customers and has profiteered an amount of Rs. 3,79,10,058/- inclusive of GST @ 12% on the base profiteered amount of Rs. 3,38,48,266/-. Further, the Respondent has realized an additional amount of Rs. 1,69,878/- which includes both the profiteered amount @ 10.66% of the taxable amount (base price) and 12% GST on the said profiteered amount from the Applicant No. 1. He has further realized an additional amount of Rs. 3,77,40,180/- which includes both the profiteered amount @ 10.66% of the taxable amount (base price) and 12% GST on the said profiteered amount from the flat buyers other than the Applicant No. 1 as mentioned in Annexure-22 of the Report dated 21.02.2019. These buyers are identifiable as per the documents placed on record and therefore, the Respondent is directed to pass on this amount of Rs. 3,77,40,180/- and the amount of Rs. 1,69,878/- to the other flat buyers and the Applicant No. 1 respectively along with the interest @ 18% per annum from the dates from which

the above amount was collected by him from them till the payment is made, within a period of 3 months from the date of passing of this order as per the details mentioned in Annexure-22 attached with the Report dated 21.02.2019.

49. In view of the above facts this Authority under Rule 133 (3) (a) of the CGST Rules, 2017 orders that the Respondent shall reduce the prices to be realized from the buyers of the flats commensurate with the benefit of ITC received by him as has been detailed above. Since the present investigation is only up to 31.08.2018 any benefit of ITC which accrues subsequently shall also be passed on to the buyers by the Respondent. The concerned Commissioner CGST/SGST shall ensure that the above benefit is passed on to the eligible flat buyers. In case the above benefit is not passed on by the Respondent the Applicant No. 1 or any other buyer shall be at liberty to approach the Tamil Nadu State Screening Committee to initiate fresh proceedings against the Respondent as per the provisions of Section 171 of the CGST Act, 2017.
50. The Respondent vide his submissions dated 16.04.2019 has himself admitted that he has two more projects which were under execution as on 1st July ,2017, details of which have been submitted by him as follows:-

Sr. No.	Particulars	Tiana	Anchorage
1	Total area of the project	3,10,860	4,76,925
2	Area sold prior to GST	2,23,795	61,078
3	Area sold post GST	48,680	78,085
4	Total flats of the project	264	245
5	No. of Flats sold prior to GST	193	28

6	No of Flats sold post GST	38	40
7	If Yes, date of OC or if No date completion mentioned in RERA	Jun' 2020	Sep' 2023
8	Whether OC received? (Y/N)	N	N

Keeping in view the self-admission of the Respondent in which he has stated that he is liable to pass on the benefit of additional ITC as per the provisions of Section 171 of the above Act, there is reasonable ground to believe that the Respondent is required to pass on the benefit of additional ITC to the eligible house buyers in respect of the above projects. Accordingly, the DGAP is directed to investigate the issue of passing on the benefit of additional ITC in respect of the above two projects and submit his Report in terms of Rule 133 (5) of the CGST Rules, 2017 which reads 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.”

51. It is also evident from the above narration of the facts that the Respondent has denied benefit of ITC to the buyers of the flats being constructed by him in his above project in contravention of the provisions of Section 171 (1) of the CGST Act, 2017 and has thus resorted to profiteering. Hence, he has committed an offence under Section 171 (3A) of the CGST Act, 2017 and therefore, he is apparently liable for imposition of penalty under the provisions of the above Section. Accordingly, a Show Cause Notice be issued to him directing him to explain why the penalty prescribed under Section 171 (3A) of the above Act read with Rule 133 (3) (d) of the CGST Rules, 2017 should not be imposed on him. Accordingly, the notice dated 27.02.2019 vide which the Respondent was directed to show cause why penalty under Section 29 and 122-127 of the CGST Act, 2017 read with Rule 21 & 133 of the CGST Rules, 2017 should not be imposed on him is hereby withdrawn to that extent.

52. The Authority as per Rule 136 of the CGST Rules 2017 directs the Commissioners of CGST/SGST Tamil Nadu to monitor this order under the supervision of the DGAP by ensuring that the amount profited 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 Commissioners CGST /SGST within a period of 4 months from the date of receipt of this order. 

53. A copy each of this order be supplied to both the Applicants, the Respondent, Commissioners CGST/SGST, Tamil Nadu for necessary action. File be consigned after completion.




Sd/-
(B. N. Sharma)
Chairman

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

Sd/-
(Amand Shah)
Technical Member

Certified Copy


(A. K. Goel)
Secretary, NAA

F. No. 22011/NAA/04/Heeranandani/2019/6586-6591 Date: 28.11.2019
Copy To:-

1. M/s Heeranandani Realtors Pvt. Ltd., 514, Dalamal Towers, 211, F.P.J. Marg, Nariman Point, Mumbai-400021.
2. Sh. Kavi Mahajan, New No. 49, Old No. 42-A, C.P. Ramasamy Road, Abhiramapuram, Chennai-600018.
3. Director General, Directorate 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.
4. Chief Commissioner, CGST, 26/1, Mahatma Gandhi Road, Nungambakkam, Chennai - 600034.
5. Commissioner, Commercial Taxes, Office of the Commissioner of State Taxes, PAPJM Building, Greams Road, Chennai - 600006.
6. Guard File/NAA Website.

